

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

229

JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19,989

257

PARK CENTRAL APARTMENTS, INC.
and
RANDALL H. HAGNER & CO.,

Appellants,

v.

STANLEY ROBINSON,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States Court of Appeals
for the District of Columbia Circuit

FILED MAY 6 1966

Nathan J. Paulson
CLERK

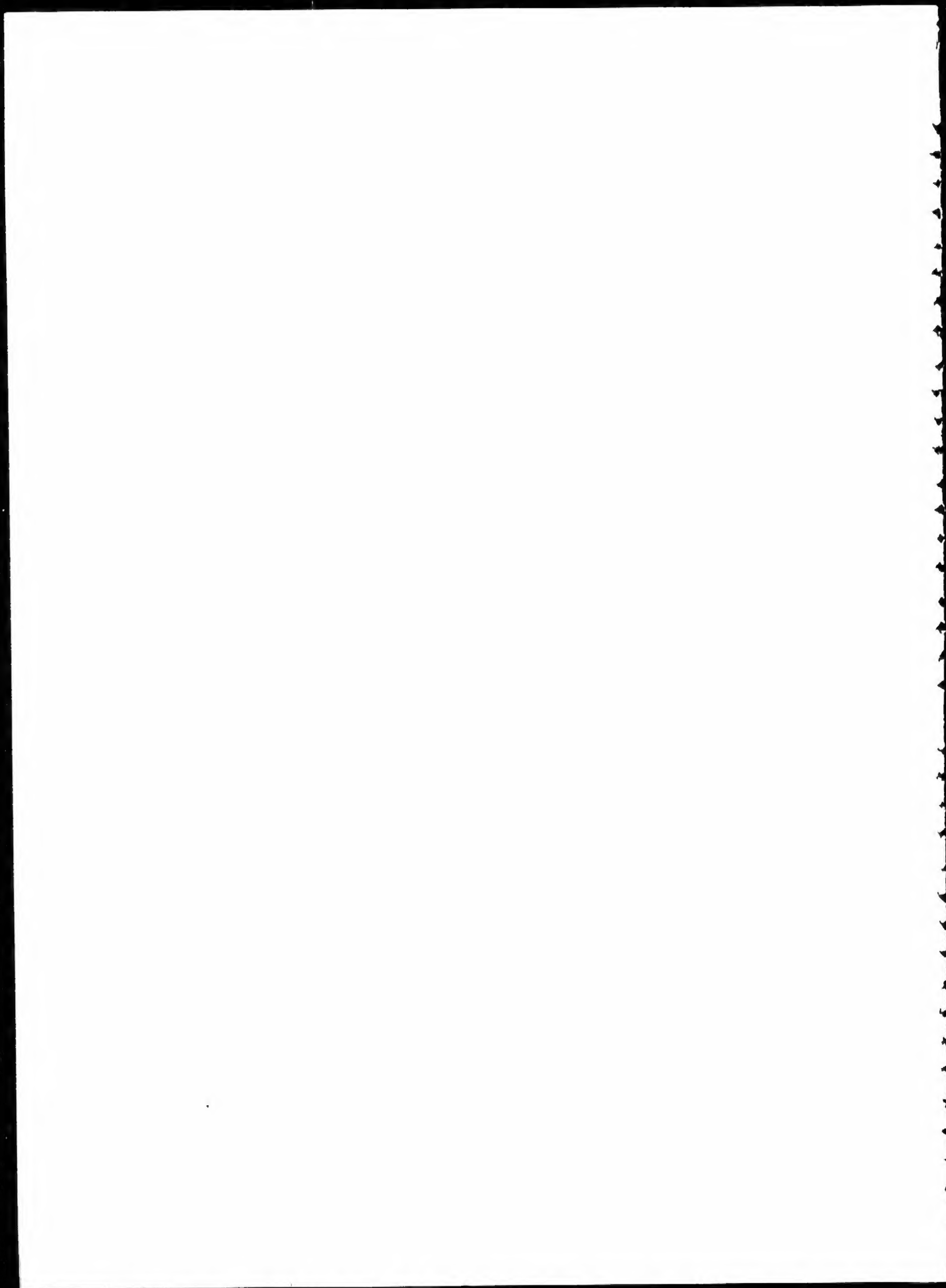


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THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STANLEY ROBINSON
1900 F Street, N.W.
Apartment 525
Washington, D.C.
Plaintiff,

v.

PARK CENTRAL APARTMENTS, INC.
A Corporation
1900 F Street, N.W.
Washington, D.C.

and

RANDALL H. HAGNER AND CO.
A Corporation
1321 Connecticut Avenue, N.W.
Washington, D.C.
Defendants

Civil Action No. 553-'63

SUMMONS

To the above named Defendant: PARK CENTRAL APARTMENTS,
INC., A Corp.

You are hereby summoned and required to serve upon Rolland G. Lamensdorf, plaintiff's attorney, whose address is 408 — Federal Bar Bldg., Wash., D.C. an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

HARRY M. HULL, Clerk of Court.

Date: February 28, 1963

[Seal of Court]

COMPLAINT
(Damages Per Personal Injuries)

1. The claim for relief herein on behalf of the plaintiff, Stanley Robinson, against the defendants, Park Central Apartments, Inc. and Randall H. Hagner and Co., corporations, resulted from an incident which occurred in the District of Columbia and is for an amount in excess of the sum of \$10,000.00 and is within the jurisdiction of this Court.

2. On December 22, 1962, and for some time prior thereto, the defendant, Park Central Apartments, Inc., a corporation, owned and operated an apartment hotel at 1900 F Street, N.W., in the District of Columbia. At the time aforesaid, the defendant, Randall H. Hagner and Co., a corporation, was the managing agent for aforesaid defendant Park Central Apartments, Inc.

3. On the aforesaid date, and for some time prior thereto, the plaintiff rented apartment No. 525 from the aforesaid defendants.

4. On December 21, 1962, the aforesaid defendants, in their respective capacities as owner and managing agent of said apartment hotel, undertook to remove, and did so remove in a negligent and careless manner, snow which had accumulated on the walkway running from the apartment hotel entrance to the south curb of F Street.

5. The aforesaid defendants, and each of them, were further negligent in their duty to business invitees, such as the plaintiff, and others in their failure to properly maintain the entrance walkway to their premises; in their failure to sprinkle or place sand, ashes, cinders or other abrasive substances on the sidewalk leading from its building entrance to the south curb of F Street so as to prevent slippery, dangerous and hazardous condition on said walkway.

6. As a result of the negligence and carelessness of one or both of the aforesaid defendants, as alleged in the preceding paragraphs, a slippery, dangerous and hazardous condition came about on the sidewalk di-

rectly in front of 1900 F Street, N.W.; which aforesaid condition caused the plaintiff, who at or about 12:45 a.m. on December 22, 1962 had exited from a taxi cab at the south curb of F Street directly in front of 1900 F Street, to fall thereby sustaining severe and permanent physical injuries.

7. As a result of the aforesaid fall, the plaintiff suffered a severe comminuted, compound fracture of the left tibia and fibula with the bones penetrating the flesh. These injuries are permanently disabling to the plaintiff. The plaintiff suffered bruises and contusions over and about his body and limbs; his nervous system was severely shocked and permanently impaired. As a result of the aforesaid injuries, the plaintiff suffered and will in the future suffer great physical pain and mental anguish; he was caused to lose and will in the future lose much time from his employment resulting in a great loss of earnings; he was caused to incur and will in the future incur great expense for hospital, x-ray, nursing and medical treatment and his earning capacity has been greatly diminished all to his damage in the sum of \$100,000.00.

WHEREFORE, the plaintiff demands judgment against the aforesaid defendants, and each of them, in the sum of \$100,000.00 plus costs of this action.

/s/ ROLLAND G. LAMENSDORF
Attorney for Plaintiff

DEMAND FOR JURY TRIAL

The plaintiff demands a trial by jury on all of the issues herein.

/s/ ROLLAND G. LAMENSDORF

ANSWER

First Defense

The complaint fails to state a cause of action upon which relief may be granted.

Second Defense

These defendants admit that the amount sued for is within the jurisdictional limits of the court and they admit the ownership, operation, and management of the building as alleged in the complaint and the fact that the Plaintiff was a tenant in the building, but they deny all allegations of negligence as set forth in the complaint and they do not have sufficient information to answer with respect to the injuries, damages, losses and expenses, and therefore deny same, and deny all allegations not specifically admitted herein.

Third Defense

The incident complained of was occasioned by the sole or the contributory negligence of the Plaintiff in failing to use due care for his own safety as required by law.

Fourth Defense

The Plaintiff assumed the risk of walking on snow and ice on the date and place as alleged.

Fifth Defense

The Defendants were not the owners, operators, or managers of ground where the Plaintiff fell.

GALIHER & STEWART

WILLIAM H. CLARKE
Attorneys for Defendants

[Certificate of Service, dated April 1, 1963]

PRETRIAL PROCEEDINGS

September 20, 1965

Damages for personal injuries due to negligence.

THE PARTIES AGREE TO THE FOLLOWING STATEMENT OF FACTS AND STIPULATE THERETO: On Dec. 21-22, 1962, P was a tenant in an apt. hotel located at 1900 F Street, N.W., Washington, D.C. which was owned by D Park Central Apartments, Inc., managed by D Randall H. Hagner & Co.

PLAINTIFF CLAIMS that at about 12:45 a.m. on Dec. 22, 1962, having alighted at the curb from a taxicab and while approaching the entrance to the apt., he slipped and fell on the walkway in front of the entrance.

He asserts that his fall, and the injuries and damages described herein below, were caused by the negligence of Ds, in that they undertook to remove snow which had accumulated on the paved walkway on several occasions and they applied snow-melting chemicals, causing an icy and slippery condition of the walkway, due in part to the snow-melting chemicals freezing, and in part to intermittent precipitation and freezing, despite creating this condition, D failed to apply an abrasive, such as sand, ashes, cinders or some other substance to the walkway and sidewalk, of all of which conditions, defendants had knowledge and all of which hazardous conditions they failed to warn P.

P'S CLAIMED INJURIES ARE AS FOLLOWS: severe comminuted compound fracture of the left tibia and fibula with the bones penetrating the flesh. These injuries are permanently disabling to the P:

Also numerous bruises and contusions over and about his head, body and limbs. Shock and damage to nervous system.

SPECIAL DAMAGES:

Geo. Wash. Univ. Hosp.	1254.15
Dr. Leonard T. Peterson	396.00
Transportation	128.20
Additional x-rays	37.00
Hospital Telephone	9.75
Medicines	27.54
Aluminum crutches	25.00
Loss of time 12/22/62 — 2/23/63, 9 weeks at \$100 per week	1500
Diminution of earning capacity	900.00

DEFENDANTS deny any negligence and assert that the incident complaint of was caused by the sole or contributory negligence of or assumption of risk by P in that he failed to look and see what was there to be seen, and walked on snow and ice which was obvious.

Ds assert that the alleged accident occurred on a public sidewalk and not on property owned and controlled by them.

STIPULATIONS

Witnesses known by Ds: Roberta Hayes, Resident Mgr., 1900 F St., N.W.; Oscar Pack, 1900 F. St., N.W.; Michael Rander, 1900 F St., N.W.; Michael Melville, 1400 12th St., North Arlington, Va.; John Thomas, 634 Morton Pl., N.E.; James Nickens, 612 Tennessee Ave., N.E.; John E. Kersey, 916 Evarts Street, N.E.; Ambulance man from ambulance 86A; Police Officer Ralph L. Robinson, Third Precinct; Dorothy V. Allshouse, 913 Spring Lane, Bailey's Crossroads, Va.; Lorraine K. Dickerson, 514 19th St., N.W.

The parties agree to file with the Clerk of the Court and to mutually exchange, on or before October 20, 1965, a list of the names and addresses of any witnesses known to them, other than those listed herein, including medical and expert witnesses, who have knowledge of any aspect of this case, indicating those who may be used at the trial. Impeachment witnesses are not to be included.

The parties agree to the mutual exchange of all medical reports of examining or treating physicians, now in hand, on or before Oct. 20, 1965, and a similar exchange of all other such reports within 48 hours of the alert of this case for trial.

Counsel for P agrees to make the P available for the purpose of a physical examination by physician of D's choice before, but not to interfere with, trial.

Following may be admitted in evidence without formal proof, subject to all legal objections: U.S. Weather Bureau reports for the mos. of Dec. 1962; HEW Mortality Tables; x-ray plates; hosp. records re P;

Counsel for P agrees to furnish Cl. of Ct. and opposing counsel on or before Oct. 15, 1965, with a written itemized statement of the basis of the amount of diminution of earning capacity (or estimate) which will be claimed at the trial.

It is agreed that the P was 55 yrs. of age at the time of the accident.

Counsel for P requests the D make available (in order that P's counsel may examine and copy) written statement of one Roberta Hayes made to D. D refuses.

Counsel for P requests that counsel for D stipulate that the walkway in front of entrance to Ds' bldg. is about 15' wide, and that from the bldg. line in front of the entrance to the public sidewalk, is a distance of approx. 17' 8" and that the public sidewalk is 12' wide at the point, but D's counsel will not so stipulate.

Counsel for D desires the income tax returns of P for the yrs. 1961 to date, and counsel for P desires production of a statement of a Roberta Hayes. Each refuses the request of the other.

The Examiner has requested counsel for the parties to appear at

trial with the maximum amt. of authority to settle this case which will be allowed them by their principals.

TRIAL COUNSEL:

Pretrial Examiner

R. G. LAMENSDORF, Esq. for P

WILLIAM H. CLARKE, Esq. for Ds

**PRETRIAL STATEMENT OF PARK CENTRAL APARTMENTS
AND RANDALL H. HAGNER CO.**

The defendants admit to the jurisdiction of the Court, ownership, operation and management of the properties, and that the plaintiff was a tenant in the building at the time of his alleged injury. The defendants deny the allegations of negligence, injuries and losses as alleged. The incident complained of was occasioned by the sole or contributory negligence of the plaintiff in failing to use due care for his own safety as required by law. The plaintiff assumed the risk of walking on snow and ice on the night in question. The fall did not occur on the property owned by either of the defendants but rather occurred on a public sidewalk.

REQUESTS

1. That the plaintiff specify with particularity the act or actions of negligence charged against the defendants.
2. That the injuries be specified and those that are permanent be so designated.
3. That all medical reports be exchanged. The defendants have the following medical report and would like a copy of any others: Dr. Peterson, January 26, 1963.
4. That the defendants be allowed to have an examination by a doctor or doctors of their own choice.

5. That eyewitnesses to the incident be exchanged and the names and addresses of anyone else having any knowledge of the facts of the accident be exchanged. The defendants know of the following witnesses:

Roberta Hayes, Resident Manager, 1900 F Street, N.W.
Washington, D.C., moved.

Oscar Pack, 1900 F Street, N.W., Washington, D.C., moved.

Michael Rander, 1900 F Street, N.W., Washington, D.C.
moved.

Michael Melville, 1400 — 12th Street, North Arlington, Va.

John Thomas, 634 Morton Place, N.E., Washington, D.C.

James Nickens, 612 Tennessee Ave., N.E., Washington, D.C.

John E. Kersey, 916 Evarts Street, N.E., Washington, D.C.

Ambulance man from ambulance 86A.

Police Officer Ralph L. Robinson, Third Precinct.

Dorothy V. Allshouse, 913 Spring Lane, Bailey's Cross
Road, Va.

Lorraine K. Dickerson, 514 — 19th Street, N.W., Washing-
ton, D.C.

6. That the weather report from the Department of Commerce be admitted in evidence without formal proof.

7. That plaintiff supply defendants with copies of income tax re-
turns.

GALIHHER, STEWART & CLARKE

WILLIAM H. CLARKE
Attorneys for Defendants

[Certificate of Service, dated September 16, 1965]

PLAINTIFF'S PRE-TRIAL MEMORANDUM**FACTS**

On December 21-22, 1962, the plaintiff was a tenant in an apartment hotel located at 1900 F Street, N.W. Said apartment hotel was owned by the defendant, Park Central Apartments, Inc., and managed by the defendant, Randall H. Hagner and Co. On December 21, 1962, said defendants, in their respective capacities, as owner and managing agent of said apartment hotel, undertook to remove, and did so remove in a negligent and careless manner, snow which had accumulated on the paved walkway running from the apartment hotel entrance to the south curb of F Street.

Said paved walkway, in front of said entrance, is approximately 15 feet wide. From the building line in front of the entrance to the public sidewalk is approximately 17 feet 8 inches. The public sidewalk is 12 feet wide.

Said defendants, on several occasions during December 21, 1962, removed snow from said walkway and the public sidewalk covering the entire distance from the apartment hotel entrance to the south curb of F Street and applied snow melting chemicals. All of this area was paved

Although the defendants were aware of the icy and slippery condition of the walkway in front of 1900 F Street resulting from the frozen glaze and ice on the sidewalk created by the snow melting chemicals and intermittent precipitation, both defendants, individually and jointly, failed to apply any abrasive (sand or otherwise) to said walkway so that it would be safe for invitees and other persons coming to or leaving from said apartment hotel.

Below freezing temperatures existed during the entire day and intermittently there was snow and precipitation.

At about 12:45 a.m., December 22, 1962, the plaintiff, a tenant and business invitee of said apartment hotel, having alighted at the curb

from a taxicab and while approaching the entrance to said apartment hotel was caused to slip and fall on said walkway in front of the entrance to said apartment hotel. Plaintiff's fall resulted from the hazardous condition created by one or both of said defendants in their negligent removal of snow, negligent application of chemicals thereto and failure to apply sand, cinders, ashes or some other abrasive to prevent said icy and slippery condition which then and there existed.

ACTS OF NEGLIGENCE

Negligent removal of snow by one or both defendants during weather conditions then existing; negligent application of chemicals and failure to apply sand, ashes, cinders or some other abrasive to walkway and sidewalk where snow had been removed.

Also failure on the part of both defendants, or one of said defendants to warn invitees of the hazardous conditions then existing on said walkway.

INJURIES

Plaintiff suffered a severe comminuted compound fracture of the left tibia and fibula with the bones penetrating the flesh. These injuries are permanently disabling to the plaintiff.

Numerous bruises and contusions over and about his head, body and limbs. Shock and damage to nervous system.

SPECIAL DAMAGES

George Washington University Hospital	\$1254.15
Dr. Leonard T. Peterson	396.00
Transportation	128.20
Additional X rays	37.00
Hospital telephone	9.75
Medicines	27.54
Aluminum crutches	25.00
Loss of time 12/22/62 - 2/23/63, 915 weeks at \$100 per week	1500
Diminution of earning capacity	900.00

STIPULATIONS

1. Medical and hospital records and X rays be admitted in evidence without formal proof if otherwise material and relevant.
2. Pertinent weather bureau records admitted in evidence without the necessity of formal proof if otherwise material and relevant.
3. At the time of the incident complained of, the plaintiff was 56 years of age. His life expectancy is 27.2 years.
4. A list of witnesses, with correct addresses, will be furnished to opposing counsel on or before October 1, 1965. Otherwise, witness will not be permitted to testify.
5. Dimensions of paved walkway and sidewalk in front of 1900 F Street are as set forth in plaintiff's pre-trial memorandum.

REQUEST

Plaintiff requests opportunity to see and copy written statement of Roberta Hayes made to defendants.

ROLLAND G. LAMENSDORF
Attorney for Plaintiff

[Certificate of Service]

PLAINTIFF'S INTERROGATORIES TO DEFENDANTS

To: Park Central Apartments, Inc.
and Randall H. Hagner and Co.
c/o Galiher & Stewart
Attorneys for Defendants
1215 — 19th Street, N.W.
Washington 6, D.C.

Please take notice that in accordance with the Federal Rules of Civil Procedure you are required to answer the following Interrogatories fully, completely and under oath and file the original with the

Clerk of Court and serve a copy thereof upon counsel for the plaintiff within 15 days after service upon you.

1. State the name and address of the resident manager at the Park Central Apartment Hotel on December 22, 1962.

2. State the period of time this person had worked in this capacity.

3. State the name and address of the night clerk on duty at or about the time the plaintiff sustained the injuries complained of.

4. State the length of time this person had served in this capacity.

5. State the name(s) and address(es) of all other persons on duty at said premises at the time the plaintiff sustained the injuries complained of.

6. Did any of your employees remove, or attempt to remove, the snow from the sidewalk entrance into and in front of your apartment hotel on December 21, 1962?

7. If your answer is "Yes" to the preceding question, state:

A. The name(s) and address(es) of said persons.

B. Are said persons presently in your employ?

C. If any are not, and you know, state the present place of employment.

D. State who was in charge or in control of said employees on December 21, 1962.

8. Were any instructions given to said employees referred to in the preceding question in regard to snow removal?

9. If your answer is "Yes" to the preceding question, state the name and address of the person who gave such instructions.

10. State, in substance, the instructions which were given.

11. How many times during the day of December 21, 1962 did you have the snow removed from said sidewalk leading to and in front of said apartment hotel?

12. State the time on said date when the last snow removal activity at said place took place.

13. Did you, or your employees, use any process for melting the snow on said date? If your answer is "Yes", state:

- A. The process used.
- B. If you know, who made or makes such process.
- C. The time and the name and address of the individual who used such process on the last occasion prior to the time the plaintiff sustained the injuries complained of.
- D. The area over which such process was applied.
- E. How the process was applied.

14. Did you, or any of your employees, apply sand, ashes, cinders or any other abrasive substance to the snow on the sidewalk in front of and leading to said apartment hotel on December 21, 1962? If your answer is "Yes," state:

- A. The substance applied.
- B. When it was last applied prior to the time the plaintiff sustained the injuries complained of.
- C. Where it was applied.
- D. Who applied it.
- E. The time of the application.

15. Did you, or any of your employees use pellets to melt the snow on the sidewalk in front of and leading to said apartment hotel on December 21, 1962? If your answer is "Yes" to this question, state:

- A. Type and name of pellets.
- B. When they were applied.
- C. Who applied them.
- D. Area to which they were applied.

16. State the name(s) and address(es) of all persons who, to your knowledge, were witnesses to the incident of which the plaintiff complains.

17. State the name(s) and address(es) of all persons who, if any

did, assisted the plaintiff into the lobby of the apartment hotel immediately after he sustained the injuries complained of.

18. State the name(s) and address(es) of all persons who talked to or otherwise assisted the plaintiff in the lobby of your apartment hotel after he sustained the injuries complained of.

/s/ ROLLAND G. LAMENSDORF
Attorney for the Plaintiff

[Certificate of Service, dated March 26, 1963]

ANSWERS TO INTERROGATORIES

1. Mrs. Roberta Hayes, 1900 F Street, N.W., Washington, D.C.
2. Approximately ten (10) years.
3. Michael Melville, 1400 Twelfth Street, N. Arlington, Virginia.
4. Five (5) weeks.

5. No one else was on duty as such at the time that the Plaintiff sustained the injuries complained of. We do, however, have an engineer and a resident manager, both of whom live on the premises.

6. Yes.

7. A. John Thomas, 634 Morton Place, N.E., Washington, D.C.; James Nickens, 612 Tennessee Avenue, N.E., Washington, D.C.; Theodore Rutledge, 320 T Street, N.E., Washington, D.C.; and John Kersey, 916 Ewart Street, N.E.

B. All except Theodore Rutledge.

C. I do not know where Theodore Rutledge is presently employed.

D. The resident manager, Roberta Hayes.

8. Yes.

9. Roberta Hayes, 1900 F Street, N.W., Washington, D.C.

10. The resident manager ordered the sidewalk shoveled several times during the day. At about 5:00 p.m. she ordered "Sno-Go" [Quik Melt" (RH)] applied to the sidewalk in front of the building and on F Street. At 9:00 p.m. she ordered the front of the building's sidewalk and that on 19th Street to be sanded.

11. The sidewalks and the front entrance of the building were worked on constantly during the afternoon and evening of December 21st, 1962.

12. Between 9:30 p.m. and 10:00 p.m. the area was sanded.

13. Yes.

A. After all of the sidewalks had been shoveled clear of snow then "Sno-Go" ["Quik Melt" (RH)] was applied to the area at or about 5:00 p.m.

B. We purchased the product from Dazon Products, 1522 Fourteenth Street, N.W., a janitor supply house. I do not know who manufactures the products.

C. "Sno-Go" ["Quik Melt" (RH)] was applied between 4:00 and 5:00 p.m. by James Nickens and John Thomas, whose addresses are given above.

D. The process was applied to the sidewalks along 19th [F (RH)] Street and the area from the front of the building to the curb.

E. Sprinkled over the area.

14. Yes.

A. Sand.

B. Between 9:30 and 10:00 p.m. on December 21, 1962.

C. The sidewalk on 19th [F (RH)] Street and the area from the front of the building to the curb.

D. John Kersey.

E. 9:30 to 10:00 p.m.

15. See No. 13 and 14 above. "Sno-Go" ["Quik Melt"] applied between 4:00 and 5:00 p.m.; sand applied between 9:30 and 10:00 p.m.

16. Oscar Pach, 1900 F Street, N.W., Washington, D.C.

17. Michael Rander [Rarden], 1900 F Street, N.W., Washington D.C.
(home address: 344 — First Street, Idaho Falls, Idaho; Rosemary Casole, Mouse Trap Club, Fort Lauderdale, Florida.

18. See above.

/s/ ROBERTA HAYES,
Resident Manager

AFFIDAVIT

DISTRICT OF COLUMBIA: SS

I, ROBERTA HAYES, being first duly sworn on oath, according to law, depose and say that I am the resident manager of the Park Central Apartments, 1900 F Street, N.W., Washington, D.C. and as such am duly authorized to answer the foregoing Interrogatories and that the Answers set forth in the foregoing pages are true and correct to the best of my knowledge, information and belief.

/s/ ROBERTA HAYES

SWORN TO AND SUBSCRIBED
before me this 12th day of June, 1963

/s/ ETHEL PETTY, Notary Public, D.C.

My Commission Expires: August 31, 1966 [SEAL]

[Certificate of Service]

EXCERPTS OF PROCEEDINGS
[December 6-8, 1965]

[2]

STANLEY N. ROBINSON

* * *

DIRECT EXAMINATION

BY MR. LAMENSDORF:

Q. Would you please state your full name? A. My full name is Stanley Newton Robinson.

* * *

Q. Where are you now employed? A. I am employed with the George Lohr Studios.

* * *

Q. Where are those studios located? A. 937 I Street, Northwest.

Q. How long have you been employed by that employer? A. About 30 years.

Q. What duties do you have there? [3] A. I am a commercial artist.

Q. What is your salary there? A. \$100 a week.

Q. What was your salary back in December 1962? A. \$100 a week.

Q. Directing your attention to December 1962 and particularly December 21, 1962, which was a Friday, where did you then live? A. At Tudor Hall -- I mean at the Park Central, 1900 F Street.

Q. Did you occupy an apartment there? A. Yes.

Q. What apartment did you live in? A. 525.

Q. How long as of that date had you lived at that location? A. Approximately seven years.

Q. On that particular day, December 21, 1962, did you go to work? A. Yes.

Q. And was your place of employment at the same place on I Street? A. That is correct.

[4] Q. What was the condition of the weather on that particular day, Mr. Robinson? A. It was very snowy and cold.

Q. Was it below freezing that day? A. I believe so.

Q. Did you work at your place of employment on that day? A. Yes.

Q. Approximately what time did you leave your place of employment? A. Approximately 9 o'clock.

THE COURT: 9 o'clock in the evening?

THE WITNESS: Yes.

BY MR. LAMENSDORF:

Q. And where did you go when you left your place of employment?

A. I went over to the Annapolis Drugstore in the Annapolis Hotel.

Q. And where is that located? A. That is located at the corner of 11th and H Street.

Q. Approximately how far would that be from your office? A. It is two blocks.

[5] Q. And what was your purpose of going to the Annapolis Hotel? A. To get something to eat.

Q. Did you get something to eat? A. Yes, I did.

Q. Where did you go in the hotel to get something to eat? A. In the drugstore.

Q. What did you have to eat? A. I had a bowl of vegetable soup, a ham sandwich, a cup of black coffee, and a glass of milk.

Q. Approximately how long did you remain in the drugstore? A. I was in the drugstore for about 45 minutes.

Q. Did you then proceed from the Annapolis Hotel to some other place? A. Yes, I did.

Q. Did someone go along with you? A. Yes.

Q. Who was that person? A. Mrs. Stevens.

Q. And what was the purpose of your going to the other place that you went to? [6] A. We were going over to the Alibi Room in the Ebbitt Hotel to see Mrs. Swigert, who is the manager of the Room.

Q. Did you know Mrs. Swigert before this occasion? A. Yes, I have known Mrs. Swigert for 18 years.

Q. And how long had you as of that time known Mrs. Stevens? A. I have known Mrs. Stevens for about 20 years.

Q. Did you and Mrs. Stevens proceed to the Alibi Room in the Ebbitt Hotel? A. Yes.

Q. Where is that located? A. The Ebbitt Hotel is at the corner of 10th and H Street.

Q. And that would be how far from the Annapolis Hotel? A. One block.

Q. What was the condition of the weather at that time? And I'd like for you to tell us the time that you proceeded over to the Ebbitt Hotel. A. It was snowing. There was a little rain mixed in with it.

Q. At what time of the evening was that? A. About 10 minutes to 10.

[7] Q. Now, in proceeding from the Annapolis Hotel to the Ebbitt Hotel where did you walk, what was your route? A. We crossed 11th Street, crossed H Street to the south side of H Street. Then we walked in fresh snow over on the sidewalk to the Alibi Room.

Q. Did you have any trouble walking on the fresh snow? A. Not particularly.

Q. Approximately what time did you arrive in the Alibi Room? A. About five minutes to 10.

Q. And did you go into the Room and were you seated there? A. Yes.

Q. How long did you remain in the Alibi Room? A. We remained in the Alibi Room until approximately 10 minutes after 12.

Q. Did you see Mrs. Swigert there? A. Yes.

Q. While you were there did you have anything to drink? A. Yes, I ordered a martini.

Q. When did you order that martini in relationship to your time of arrival? [8] A. Almost immediately afterward.

Q. And was it served at that time? A. Yes.

Q. Did you have only one martini or did you have a second one?

A. No, I had two martinis.

Q. And when did you have the second martini? A. About 11 o'clock.

Q. Did Mrs. Stevens, who was with you, also have a drink at that time? A. Yes, she did.

Q. And what did she have, if you recall? A. She was drinking Cutty Sark and water, as I recall.

Q. And did she order the same number of drinks that you did? A. Yes.

Q. Did you have anything at all to eat while you were there? A. Just a bowl of potato chips.

Q. And did you consume those? A. Yes.

Q. When you were about to leave did anything occur? A. Yes. We were about to leave when a gentleman[9] came in from the street
* * *

* * *

Q. As a result of this man coming in, did Mrs. Swigert do anything?

* * *

A. Mrs. Swigert went out and sanded the sidewalk in front of the hotel.

Q. And did you and Mrs. Stevens leave after that? A. Yes.

Q. Did you have a difficulty walking where it was sandy? A. No.

Q. Where did you and Mrs. Stevens proceed? A. Well, we proceeded back to her bus stop. We [10] stepped into the street area rather than walking on the sidewalk.

Q. Was that after you had left where it was sanded? A. Yes.

Q. And where did you take Mrs. Stevens to catch her bus? A. The bus stop at that time was at the rear entrance of the Annapolis Hotel on 12th Street.

Q. Did you take Mrs. Stevens to her bus stop? A. Yes, I did.

Q. Did you remain with her until her bus arrived? A. Yes, I did.

Q. What was that? A. About 20 minutes after 12.

Q. And I assume Mrs. Stevens boarded the bus? A. She did.

Q. What did you then do? A. I walked back to the corner of 12th and H and tried to catch a cab.

Q. Were you successful? A. No, I was not.

Q. Then what did you do? A. I walked from 12th and H over to the main entrance [11] of the Annapolis Hotel and tried to catch a cab there.

Q. Were you successful there? A. No, I was not.

Q. And then what did you do? A. I walked to 11th and H. The same thing happened; I couldn't get a cab there.

Q. And then what happened? A. Well, I decided at that time the best thing to do was to walk down to G and 12th, where the bus stop was for the Potomac Park Bus, take a chance on that.

Q. And then what happened? A. I got to 12th and H —

Q. Mr. Robinson, keep your voice into the mike so the Court can hear you. A. I got back to 12th and H and a cab was in the middle of the street waiting for the light. He was empty. I walked out in the street and got into his cab and told him to take me to the Park Central, 1900 F Street.

Q. Did he take you there? A. Yes, he did.

Q. Do you know approximately what time you arrived at the Park Central at 1900 F Street? A. I would say it was around 20 minutes of one.

* * *

[12] Q. * * * On what side of the street is the Park Central Apartment Hotel located? A. It is located on the south side of the street.

Q. And in what direction was the taxicab in which you were riding headed when he arrived at the Park Central? A. He was headed east.

Q. Would that place the right side of the cab adjacent to the curb?

A. It would.

Q. What did you do then? A. I paid the cab driver, got out of the cab.

Q. And then what did you do or what happened? A. I took a few steps, I would say about four or five, and I fell.

Q. Now, what caused you to fall? A. Ice.

Q. What was the condition of the walk area on which you were proceeding at that place and at that time? A. It was a sheet of ice.

Q. Was there any snow? [13] A. No.

Q. Was there any sand or any other abrasive on that walk area? A. Not at that time.

Q. Do you know where you fell? A. I would say that I was approximately half-way to the entrance. I am not sure.

Q. Half-way to the entrance from the south curb, is that what you mean? A. Yes.

Q. Now, did you at my request prepare a diagram of the entrance way? A. I did.

Q. Did you use any type of measure in order to attempt to the best of your ability to make it an accurate diagram? A. Yes, I used a steel rule, a tape.

Q. Mr. Robinson, I am going to hand you what purports to be a diagram marked Plaintiff's Exhibit No. 1 for identification and ask you what this is. A. This is the original diagram that I drew up.

Q. Now, on that diagram, what does it depict? A. It depicts the footage.

Q. Of what? [14] A. Of both the public sidewalk and the Park Central walkway.

Q. Is that in front of 1900 F Street? A. Yes.

Q. And does it depict the walk areaway from the south curb all the way into the entrance of 1900 F Street? A. It does, yes.

Q. That entrance-way has been changed since this? A. So I understand.

Q. Mr. Robinson, will you tell us the distance from the south curb to the entrance to 1900 F Street? A. 29 feet 8 inches.

Q. The walk area at 1900 F Street from what would be the entrance of 1900 F Street to what would be the south side of the public sidewalk is how far? A. I didn't quite follow you.

Q. What is the distance from the entrance itself of 1900 F Street to the public sidewalk? A. 17 feet 8 inches.

Q. What is the distance shown on your diagram as the public sidewalk? A. Exactly 12 feet.

Q. Does that also include that portion along the curb [15] itself?
A. Yes, it does.

* * *

MR. LAMENSDORF: * * * I would like to offer that diagram in evidence.

MR. CLARKE: I have no objection, except some other witness has already placed some marks on there.

THE COURT: You don't object to the introduction of the exhibit?

MR. CLARKE: No.

THE COURT: Let it be admitted.

THE DEPUTY CLERK: Plaintiff Exhibit No. 1 marked in evidence.

(Diagram marked Plaintiff's Exhibit No. 1 for identification and received in evidence.)

THE COURT: That is a very helpful diagram. You may proceed.

BY MR. LAMENSDORF:

Q. Mr. Robinson, I was going to ask you to mark with a blue pencil where it was that you fell.

THE COURT: May I interrupt you? What does the circle noted in red with a cross inside signify?

[16] MR. LAMENSDORF: Your Honor, that is the place that was

marked by the other tenant who picked up Mr. Robinson and whose deposition I will have to use because he is in Korea.

THE COURT: I see.

BY MR. LAMENSDORF:

Q. Do you understand my question? A. No, not exactly I do not.

Q. I would like for you to make where it is you think that you fell.

A. Well, I think it's approximately the same place that the mark is on here.

Q. You think it's the same place that was marked by Mr. Riordon?

A. Yes, I believe so. Do you want me to put a mark on there?

Q. No, I think you have answered the question.

THE COURT: I think he has.

Q. Mr. Robinson, when you fell how did you fall? Could you describe the manner in which you fell? A. I went down in a sitting position. I slipped and went down in a sitting position.

Q. In a sitting position? [17] A. Yes.

Q. And do you know whether you were sitting on one or both legs or which leg? A. I was sitting on my left leg.

Q. What, if anything, happened to your left leg? A. Well, I broke it.

Q. And when did you first learn that you had broken your left leg? A. I didn't realize I had broken it until I attempted to get up. Then I fell down.

Q. And was that in the same spot where you think — A. The same spot.

Q. And what did you then do? How did you know you had broken your leg? A. I rolled over onto my back and I held my leg up with my right hand and the foot and the ankle were hanging at right angles from the leg.

Q. Mr. Robinson, you have a deformed left arm which you have had since childhood, is that correct? A. That is correct, yes.

Q. It had nothing to do with this? A. No.

Q. What did you attempt to do, if anything, when you [18] realized that you had been injured? A. Well, I called to the cab driver to help me, and he at that moment got traction and took off. There was no one on the street. There was no traffic. I realized that I could not stay there. There was this misty rain coming down, so I attempted — I was contemplating moving to the right, if possible, to get my right hand into the snow on the lawn area and possibly with my right hand and my right leg propel myself to the entrance to the Park Central.

Q. Could you get any traction? A. My hand kept slipping because I had no glove on.

Q. Was there — did you notice whether or not there was any sand at all at that location? A. There was no sand at that particular location, no, sir.

Q. Was there any sand which you saw at that time that evening in front of 1900 F Street? A. I saw none.

Q. Did someone come to your assistance finally? A. Yes, sir; at the time that I was about to move two young men came out of the entrance and one called to me, Don't move, we will carry you in.

[19] Q. And did you remain there and did they carry you in? A. They did.

Q. Was an ambulance called? A. Yes.

Q. And were you then removed to the hospital? A. I was.

* * *

BY MR. LAMENSDORF:

Q. Mr. Robinson, were you wearing anything other than shoes that evening? A. I was wearing a heavy pair of rubber overshoes, not galoshes.

THE COURT: A heavy pair of what?

THE WITNESS: Rubber overshoes.

MR. LAMENSDORF: If Your Honor please, I think that is all of my testimony on this point.

* * *

[20]

CROSS-EXAMINATION

BY MR. CLARKE:

Q. Mr. Robinson, when you left that morning to go to work, that is, December 21, 1962, to go to work, was it snowing? A. Yes, it was at the time.

Q. What time did you leave to go to work? A. I arrived at the studio, as I recall, 11 o'clock.

Q. Did you notice the men from the Park Central out cleaning the sidewalk then? A. No, I did not.

Q. Had the sidewalk been cleaned then? A. I don't really recall.

Q. You had lived at the Park Central how long at this time? A. Approximately seven years.

Q. And during the seven years that you had lived there had you noticed the boys out cleaning snow? A. Oh, yes.

Q. And were they usually very prompt about that? A. Yes.

Q. You don't recall having any difficulty getting [21] out of the apartment when you went to work at 11 o'clock? A. No, I do not.

Q. Did you go out for lunch that day after reporting for work? A. No, I did not go out for lunch that day. I went to a delicatessen directly across the street and got a sandwich and a cup of coffee and ate it in the studio.

Q. When you went out to the delicatessen to get the sandwich, what was the weather like? A. It was snowing.

Q. What time was that, sir? A. I would say about 12:30.

Q. Have you any idea how much snow fell on the 21st and the early morning hours of the 22nd? A. About five inches, I believe.

* * *

[22] Q. When you walked from your office to the Annapolis drug-store did you have any difficulty with the snow and ice at that time? A. It was much easier walking in the snow rather than walking in the center of the sidewalk because it had been packed down and it was slippery. I walked in the fresh snow as much as possible.

Q. And by fresh snow you mean the now that on one else had walked on? A. That is correct.

Q. And your foot would sink into that snow, wouldn't it? A. Yes.

Q. And that would give you traction? A. You could get traction, that is correct.

Q. At that time, when you left your employment and went to the drugstore, had any ice formed on the sidewalk area? A. Only on the section where people had been walking.

Q. And that is from their compressing the ice? A. Packing it down, yes, sir.

[23] Q. When you left the Annapolis Hotel and walked to the Alibi Room at the Ebbitt Hotel did you have any difficulty with snow or ice? A. Slightly; not to any great extent. We walked on the sidewalk at that time.

Q. Did you walk in fresh snow as opposed to the packed snow? A. Yes.

Q. Did the two martinis that you consumed have any effect on you? A. No.

Q. Do you generally take several drinks every night? A. That is correct.

Q. And when you left the Alibi Room and walked to the bus stop with Mrs. Stevens, this would be now sometime after 12 o'clock, according to my notes. Did you have any difficulty walking at that time? A. Yes, we did.

Q. Were there many people out at that time of the night? A. No, very few.

Q. It had been a bad night, hadn't it? A. It had been an extremely bad night.

[24] Q. It had been snowing and raining? A. That is correct.

Q. Sleeting and freezing, hadn't it? A. Yes, sir.

Q. And the weather conditions when you left the Ebbitt Hotel were

as you have just described, is that right? A. It had practically stopped snowing at that time, but there was a misty rain coming down, mixed with snow at that time.

Q. And was this freezing when it hit the ground? A. Yes.

Q. Did this make a layer of ice over the snow that was already on the ground? A. Yes.

Q. And when you walked on the fresh snow, as you have described it, did your feet go through this layer of ice? A. We walked in the street rather than on the sidewalk at that point because it was easier to walk in the street than on the sidewalk.

Q. Why was it easier? A. Because we could get more traction.

Q. And did this same condition exist after you had seen Mrs. Stevens off and walked to get your taxicab? [25] A. Yes, it did. However, I was trying to get the cab in front of the Annapolis Hotel.

Q. When you were walking from place to place, the same condition existed, ice on top of the snow that had fallen that day? A. The sidewalk in front of the Annapolis Hotel was clear.

Q. I am talking about the other sidewalks. A. Yes, they were.

Q. And I am talking about the street area where you walked. A. Yes, sir.

Q. Did you continue to walk in the street area? A. Not after we got Mrs. Stevens to her bus stop.

Q. Then you walked on the sidewalk area? A. That is correct.

Q. You have indicated you had trouble getting a cab that night. Is that because there was not much traffic out due to the snow storm? A. There was very little traffic. The cabs on 12th Street were all headed toward the Greyhound Terminal. There were very few of them going north and the ones that did go by had passengers. I tried there. I went to the entrance, the [26] main entrance to the Annapolis Hotel. There was a group of people there. The cabs that did pull in there were not interested in a single passenger. And there was more traffic going down 12th Street and cabs, so I figured my chances were bet-

ter over at 12th. Walked over there, the same thing was true, cabs heading south were filled and the ones that were empty were not stopping.

Q. Do you know the name or the description of the taxicab that you did hail that night? A. No, I do not. It was a private cab.

Q. Isn't it a fact that most of the taxis and other traffic were traveling in the middle of the street rather than pulling up to the curb, because of the snow? A. Exactly.

Q. And you didn't think it was unusual to have to walk to the middle of the street to get a taxi, did you? A. No, not at that particular point I did not. He was stopped for a traffic light.

Q. I have in my notes that when I took your deposition you said that it was snowing lightly when you saw Mrs. Stevens off on the bus. A. That is correct.

Q. And then it turned misty and rainy? A. That is right.

[27] Q. And that would be at what time, sir? A. That was about 20 minutes after 12.

Q. Was it very cold at that time? A. Yes, it was quite cold.

Q. When you took this cab to the Park Central do you know whether or not the cab had its windshield wipers on? A. That I can't recall. I should almost think that he had to.

Q. Were you the only passenger in the cab? A. Yes, I was.

Q. When the cab pulled up to the Park Central Apartments did it pull right up to the curb? A. Yes, he did.

Q. Do you recall whether there was any snow in the street area there that the cab had to go through? A. Shoveled snow?

Q. Yes. A. Yes, there was some.

Q. Was the cab able to pull into the — A. Yes, he pulled right up.

Q. — curb there in front of the Park Central? A. Yes.

Q. And when you got out of the cab did you step in [28] the gutter or the street or the sidewalk? A. I stepped directly onto the sidewalk.

Q. And is there any tree area or park area between the curb and the sidewalk in that region? A. To the left of where I got out there is.

Q. To the left? A. There is a tree, yes.

Q. That isn't shown on the diagram, is it? A. No, I didn't put it in.

Q. When you got out of the cab were you directly in front of the apartment? A. Not quite, just a little bit to one side, a little bit to one side of the main entrance.

Q. To which side of the entrance were you? A. Facing the entrance a little bit to the right.

Q. That would have been away from 19th Street? A. Yes.

Q. 19th Street would be to your left? A. That is right.

Q. The entrance. And then you got out west of the entrance to the apartment? A. Not west. We were not quite in the center of the walkway leading into the Park Central. We were a little bit [29] to one side, but not completely beyond it.

Q. Did you see any other people walking on the sidewalk area when your cab pulled up to the entrance? A. No, I did not.

Q. Were the weather conditions then existing the same as you have described before when you got in the cab, that is, misty? A. It had stopped snowing at that time, as I recall, and there was a very light misty rain coming down.

Q. When you say misty rain you do mean water falling, do you not? A. Yes; it's heavier than a fog, but it's not as heavy as a rain.

Q. And it does wet the ground? A. Yes.

Q. Now, was that misty rain freezing when it reached the ground? A. I would say so.

Q. Mr. Robinson, were there any lights on in front of the apartment house that night? A. Yes, the two lights were on on either side of the door. There is one light on either side of the door, and to the east there is a street lamp.

[30] Q. And you had sufficient light to see the conditions there?

A. I could see very well.

Q. Did you know when you pulled up in front of the apartment that there was ice that you had to walk over? A. My first impression before I got out of the cab was that the sidewalk had just been recently cleared off because there was no indication of snow whatsoever. It appeared to me as though it was just wet concrete. I was very relieved to see that.

Q. Did you see evidence where the snow had been shoveled off from the sidewalk area and placed in the street? A. Yes.

Q. And did you realize that the sidewalk had ice on it? A. Not when I first got out of the cab, no, I did not.

Q. When did you realize that there was ice on the sidewalk? A. After I had taken about three steps.

Q. What made you realize that it was ice? A. I started to slip.

Q. Well, there had been ice on the street when you had gotten in the cab, hadn't there? [31] A. Yes.

Q. Didn't you expect to find ice on the street and sidewalk when you got out of the cab? A. No, because I think it had freshly been cleared. That was my impression, as I said, when I was in the cab, that the sidewalk had recently been cleared.

Q. You indicated that you called to the cab to stop and the cab just started off? A. That is correct; he had been trying to get traction.

Q. You mean the street was slippery? A. Yes, his wheels were spinning.

Q. And were his wheels spinning when you took these two or three steps? A. Yes.

Q. And then after you fell you looked back and you still saw the wheels of the cab spinning? A. He was still there, yes.

Q. Did you at that time recognize the cab by symbol or number or anything of that nature? A. No, I did not.

Q. Now, at that time did you look around to see where you were?

A. Yes.

[32] Q. And did you see anyone who could help you? A. No one.

Q. And did you look to see the condition of the sidewalk at that time? A. Yes.

Q. You were concerned at that time about the sidewalk? A. Yes, I was.

Q. And did you look around to see if there were any people walking around there that could help you? A. Yes.

Q. Did you see anyone? A. I did not.

Q. Did you notice whether or not the sidewalk that runs in front of the building down to 19th Street had been cleared? A. Yes.

Q. Had it been cleared? A. Yes.

Q. Had the sidewalk area been cleared to the west, to the apartment line? A. Yes.

Q. Then you noticed that when you were there? Were there any bushes of any type close by you? [33] A. None that I could grasp hold of.

Q. Did you see any? A. Well, there is shrubbery planted around on both sides.

Q. Where is the shrubbery planted? A. Well, that I can't — farther back toward the building.

Q. Would there be any shrubbery out near the public sidewalk area? A. No.

Q. When you got out of the cab did you have to walk on any fresh snow before getting on the sidewalk? A. No, I did not.

Q. You stepped right out of the cab, right onto the sidewalk? A. Over some piled snow.

Q. Beg pardon? A. Over some piled snow.

Q. Did you, upon getting out of the cab, have to step over snow?

A. Yes, onto the sidewalk.

Q. Onto the sidewalk? A. Onto the sidewalk.

[34] Q. Then how far was the cab from the curb when you alighted?

A. Well, as I recall, he was right up to the curb. He couldn't have been more than six inches away from the curb, at the most.

Q. Well, when you got out of the cab didn't you just say that you had to step over some snow to get up on the sidewalk? A. I stepped over this mound of snow, yes.

Q. Where was this mound of snow? A. On the edge of the sidewalk.

Q. Was it on the sidewalk or in the street? A. I believe it was in both.

Q. How deep was that snow there? A. I would say about six or eight inches, approximately.

Q. Mr. Robinson, after stepping over this snow that you just told us about did you then have to walk toward 19th Street to get to the front of the apartment? A. No, I went straight ahead.

Q. Were you able to go into the entrance-way without making a turn? A. Yes.

[35] Q. You were going in at an angle, then, is that right? A. Yes, that is correct.

Q. When you fell down you didn't, by any chance, hit any bushes, did you? A. No, sir.

* * *

BY MR. CLARKE:

Q. Mr. Robinson, you said in your testimony that you had taken three steps and fell. Did you actually count the steps as you took them that night? A. No, I did not.

Q. You really don't know whether you took one, two or three steps, do you? A. My impression is that I took four or five steps, sir.

Q. Do you recall when I took your deposition that you said you just walked a few steps? Do you recall using that word?

THE COURT: I always like to have the question and answer read to the witness instead of having it paraphrased [36] by counsel.

MR. CLARKE: Page 15. I will have to read several questions to give the context.

BY MR. CLARKE:

Q. "What, if anything, happened thereafter?"

"A. What, if anything —

"Q. Yes.

"Well, I walked a few steps and I slipped and fell."

Does that refresh your memory, sir? A. Yes.

Q. You indicated today that you thought the streets were wet rather than — I mean the sidewalk was wet rather than ice? A. Yes.

Q. And I asked you about the lights and you said there were lights there? A. Yes.

Q. The usual lights that they had burning? A. Yes, that is correct.

Q. And you could see things in the area with those lights on, couldn't you? A. Yes.

[37] Q. Couldn't you see the condition of the sidewalk when you got out of the cab? A. I didn't notice it at first, no, sir. My impression that the sidewalk was wet was still when I was in the cab.

Q. I am referring to the deposition again, page 16, and I ask you if this refreshes your memory:

"You could see where you were going, couldn't you?"

"A. Oh, yes, definitely.

"Could you see the condition of the sidewalk when you got out of the cab?"

"A. Yes.

"Q. What was the condition of the sidewalk?"

"A. The sidewalk had been cleared completely of snow and there was a glaze of ice, sheer ice over on the sidewalk. There was no vestige of any snow at all and there was water on the ice."

A. That is correct.

Q. And you realized that, now that your memory has been refreshed? A. Yes.

* * *

[38] Q. You did recognize this condition of ice on the sidewalk existing when you alighted from the cab, did you not? [39] A. Not immediately.

Q. Let me read further in the deposition and see if this refreshes your memory, at the bottom of page 16:

'Did this condition exist from the time you stepped out of the cab on the public sidewalk up to the door of the apartment?

'A. Yes.

'Q. Could you see this condition when you stepped out of the cab onto the sidewalk?

'A. Yes.'

Now does that refresh your memory? A. Yes.

Q. And isn't it a fact that, now that your memory has been refreshed, that you recognize that this icy condition existed when you stepped out of the cab? A. My impression was, when I first stepped out of the cab, that it was water, that the sidewalk was wet. I took about three steps, as I recall, and I realized that it was ice.

Q. Then you would say that the testimony that you gave in the deposition on December 17, 1963 was not correct? A. No, I would not say that it was incorrect. I can't honestly recall.

[40] Q. Would you say that you do not now recall what the condition of the sidewalk was when you alighted from the cab? A. It was icy, yes.

Q. And you knew that when you alighted from the cab, didn't you? A. Well, I will have to say yes.

Q. Did you take a usual step that you usually take or did you take a larger step or a smaller step? A. I took a usual step.

Q. And what is your usual step? A. Approximately two and a half or three foot step.

Q. Did you tread more cautiously, knowing that the ice was on the sidewalk? A. Not at first I didn't. When I started slipping, yes.

Q. When you started slipping did you have any further control over your body? A. Not to any great extent.

Q. So that whatever steps that you made before you started slipping were your usual steps? A. Yes.

Q. Isn't it a fact that the area next to the sidewalk area is level with the sidewalk area? [41] A. Yes.

Q. And that you could step onto that area without going up a hill or down a gully? A. Yes.

* * *

Q. Mr. Robinson, you have indicated that you would adopt the marks made on Plaintiff's Exhibit No. 1 as the [42] spot where you fell? A. Yes.

Q. Isn't it a fact that you don't know whether you fell on public space or on the private sidewalk area? A. I don't know exactly where I did fall, no.

Q. Is this the area where you ended up after you had fallen and turned over on your back and tried to — A. I hadn't moved to any degree at all. Yes, that is where I ended up.

Q. This is where you ended up, where the marks are? A. Yes.

Q. Do you know where you actually fell? A. Right there, I would say.

Q. Well, when you turned over or rolled over on your back didn't you move some distance? A. No, I did not. I went immediately over backwards from a sitting position.

Q. And at that time you weren't looking to see whether you were on public space or private space, were you? A. No, I was not.

Q. Mr. Robinson, isn't it a fact that after you were taken to the hospital that you talked with police officer Robinson at the hospital? [43] A. I understand that it was, that I at that time was apparently in a state of shock. I remember very little about it.

Q. Do you recall talking to police officer Robinson at the hospital? A. No, I do not.

Q. Do you recall a policeman asking you where your fall occurred?
A. No, I don't recall any interview.

Q. Were you conscious or unconscious after your fall? A. I was conscious.

* * *

[44] Q. I have a note that I think I took down correctly. When you were asked where you fell, just before the recess, by your counsel, did you use the words I am not sure? A. I believe I did.

Q. At the time that you fell, Mr. Robinson, did you go forward or backward or sideways? A. I went straight down in a sitting position.

* * *

[45] REDIRECT EXAMINATION

BY MR. LAMESNDORF:

Q. Mr. Robinson, at the time your deposition was taken did you tell Mr. Clarke at that time that as you recalled you had taken approximately four or five steps when you fell? A. Yes, I believe I did.

Q. Did you also tell him that you were almost half-way to the door from the curb when you fell? A. I believe so.

Q. Mr. Robinson, do you recall whether the taxicab driver who brought you to 1900 F Street was colored or white? A. He was a colored cab driver.

* * *

[46] RENA STEVENS

* * *

DIRECT EXAMINATION

BY MR. LAMENSNDORF:

Q. Mrs. Stevens, please keep your voice up so that counsel and the Court can hear you. Your name is Mrs. Rena Stevens? A. Right.

* * *

Q. Where are you employed, Mrs. Stevens? A. The Annapolis Hotel.

Q. How long have you been employed at the Annapolis Hotel? A. 27 years.

Q. 27 years. What is your job there? A. I am a waitress in the Surf Room.

Q. Do you know the plaintiff in this case, Stanley [47] Robinson? A. I do.

Q. How long have you known Mr. Robinson? A. Approximately 25 or 26 years.

Q. Directing your attention to December 21st, 1962, do you recall that particular day? A. I do.

Q. Were you at work at the Annapolis Hotel that afternoon and evening? A. I was.

* * *

Q. And approximately what time on that particular day did you get off? A. Somewhere after 9 o'clock. Approximately maybe 20 after 9, something like that.

Q. Did you see Mr. Robinson in the Annapolis Hotel? A. I saw him in the Annapolis Drugstore.

Q. And as a result of that did you make arrangements to go somewhere? [48] A. I did.

Q. And where were you going? A. We were going to the Alibi Room to see Mrs. Swigert, who was a long friend of both of us.

Q. And approximately what time did you go to the Alibi Room? A. I imagine about quarter of 10.

Q. Now, what was Mr. Robinson doing in the drugstore? A. Eating.

Q. Could you tell us the route which you took about quarter to 10 to the Alibi Room? A. We left the drugstore and I am not sure whether we walked across the street or one way or the other, but we had to get on the other side of the street; and I think we walked to the Gas Company and then turned left up to the Ebbitt Hotel.

Q. What was the condition of the weather on that day? A. It had

snowed most of the day and at times it was misty and rainy and cold and at times it was wind.

Q. Do you recall on your walk from the Annapolis Hotel to the Ebbitt Hotel whether you walked on the sidewalk? A. We walked on the sidewalk going over to the Alibi Room.

[49] Q. And at what time did you arrive at the Alibi Room? A. Approximately 10 of 10, I would say.

Q. Did you see your mutual friend there? A. Yes.

Q. Did you and Mr. Robinson have a drink there? A. We did.

Q. About what time was it that you ordered that drink? A. I imagine around 10 o'clock because we ordered shortly after we arrived.

Q. And what did you have and what did Mr. Robinson have? A. Mr. Robinson had a martini and I had Cutty Sark and water.

Q. Did Mr. Robinson have any other drink that evening at that place? A. Yes.

Q. What other drink did he have? A. He had another martini.

Q. And about what time was it that he received the second martini? A. Oh, he is so slow drinking it must have been at 11 o'clock or quarter of.

Q. And did he have anything to eat at the Alibi Room? [50] A. Oh, we nibbled on potato chips, things like that.

Q. Approximately what time did you leave the Alibi Room? A. Approximately around 12, maybe a little after. I believe it was a little after, sir, because of my bus schedule. I am quite sure it was a little after.

Q. Did you go to catch your bus? A. Yes. As I said, about the time we were ready to leave, Mrs. Swigert came — someone came in the Alibi and said —

Q. Don't tell us what they said. But as a result of somebody coming in did Mrs. Swigert do anything? A. Yes, she would not permit us to leave until she had gone out and sanded the sidewalk.

Q. And did you leave after she had sanded the sidewalk? A. Yes.

Q. Did you have difficulty at that time walking on the sanded sidewalk? A. Not on the sanded sidewalk, but that only was a short ways because it was only —

Q. What time was that when you were on the sanded sidewalk?

[51] A. Well, between 12 and 12:10.

Q. And how far did you have to walk to catch your bus? A. Well, from the Alibi Room, which is on 10th and H, to 12th and H. That is where I caught my bus.

Q. And what time did you catch your bus? A. 20 after 12.

Q. And is that where you left Mr. Robinson at that time? A. Yes, sir.

Q. What was the condition of the weather at that time? A. It was misty, as I recall it, and it was wet too because I remember we walked in the street rather than on the sidewalk after we left the Alibi where it had been sanded. We then switched to the street because I had had an injured foot and I was so afraid of falling.

Q. What was Mr. Robinson's condition as to sobriety at the time he left you? A. Well, he certainly was sober.

* * *

[52]

CROSS EXAMINATION

BY MR. CLARKE:

* * *

Q. I am interested in the weather when you left the Ebbitt Hotel Alibi Room. What was it like when you went out? [53] A. I think it was still misting.

Q. What do you mean by that? A. I don't know how to define "misting". It was very light.

Q. Would it gather on your clothes as you walked outside? A. I really couldn't say. I don't remember.

Q. Was it very cold? A. It was cold, yes.

Q. Was it freezing? A. Yes.

Q. Was it slippery? A. Yes.

Q. It had been this way when you went into the Ebbitt Hotel at 10:00 o'clock? A. No.

Q. You made one statement, "I was afraid of falling." Do you remember making that? A. I do.

Q. This is why you walked in the street? A. Yes.

Q. You realized at that time it was late at night, did you not? A. Yes.

* * *

[54]

REDIRECT EXAMINATION

BY MR. LAMENSDORF:

Q. Mrs. Stevens, were you afraid of falling because of some injury you had received previous to this date? A. That is right. I had broken a heel and I was afraid of that because I think that is uppermost in your mind if you are on crutches as long a time as I was.

* * *

ETHEL SWEIGART

* * *

DIRECT EXAMINATION

* * *

[55] Q. Where are you employed, Mrs. Sweigart? A. At the Ebbitt Hotel.

Q. Were you so employed there in December, 1962? A. Yes, sir.

Q. What is your employment at the Ebbitt Hotel? A. I am the Manager of the Cocktail Lounge.

Q. Is that known as the Alibi Room? A. The Alibi Room.

Q. Do you know the plaintiff, Stanley Robinson? A. Yes, I do.

Q. How long have you known Mr. Robinson? A. Since 1945.

Q. Do you also know a Mrs. Rena Stevens? A. Yes, sir.

Q. How long have you known Mrs. Stevens? A. Since 1945.

Q. Directing your attention to a Friday evening, December 21,

1962, did you have occasion to see Mr. Robinson and Mrs. Stevens?

[56] A. Yes, I did.

Q. Where did you see them? A. They came into the Alibi Room.

Q. About what time of the day or evening was it they came into the Alibi Room? A. Around 10:00 o'clock at night.

Q. Did they sit down at a table? A. Yes, sir.

Q. Were they served anything to drink? A. Yes, sir. She had a Scotch and he had a Martini.

Q. Approximately what time was it that he was served the Martini? A. A little after 10:00.

Q. Did Mr. Robinson have an additional drink that evening? A. Yes, he did.

Q. About what time was it that he had the additional drink? A. I would say approximately one hour later.

Q. Was the Alibi Room crowded that evening? A. There was nobody there but she and I and Mr. Robinson.

Q. Was anything in the way of food placed on the table at the time they had their drinks? [57] A. Yes, sir; potato chips and pretzels.

Q. Do you know approximately what time Mr. Robinson and Mrs. Stevens departed? A. It was just around 12:00 o'clock.

Q. Just before they departed, did you do anything in regard to the areaway outside of the Alibi Room?

MR. CLARKE: I would object to that. That would have nothing to do with the case.

THE COURT: I really don't think it has, but it was brought out by witnesses and there was no objection, and I think that is true.

MR. CLARKE: It was made in the opening statement and I couldn't object to it.

MR. LAMENSDORF: I brought it out by Mr. Robinson and, also, Mrs. Stevens.

THE COURT: I would sustain the objection were it not for the fact

that it was brought out without objection from other witnesses. I don't think it makes any difference, anyway. You may answer.

BY MR. LAMESDORF:

Q. Will you answer, Mrs. Seigart? A. Yes, I did.

Q. What did you do? [58] A. I took a couple of buckets of sand and threw it on the sidewalk.

Q. What was the purpose of doing that? A. There was a sheet of ice, and she said, 'Don't go out. You will break your neck.'

Q. Did the bucket of sand make any difference in the condition of the sidewalk?

* * *

BY MR. LAMENS DORF:

Q. Mrs. Sweigert, at the time of Mr. Robinson's departure, was he sober or not sober? A. Very definitely sober.

* * *

CROSS EXAMINATION

BY MR. CLARKE:

Q. Mrs. Sweigart, you say there were only two people there that night? A. Yes, sir.

Q. You and Mr. Robinson, and the other lady? A. Yes, sir.

Q. And then a customer came in and said, 'Don't go out. [59] It is like a sheet of ice. You will break your neck.' A. That is correct.

Q. Up to that time, you had not gone out? A. No.

Q. When you went out, did you find the condition of the streets like a sheet of ice? A. I certainly did.

Q. And you threw sand on them? A. I did.

Q. And it had not been like that previously, had it? A. It had been snowing all day and it had turned to rain and freezing, and it was all slick and glassy.

Q. Slick and glassy after 12:00 o'clock at night, is that right?
A. Prior to that, I don't remember, but I know it was when I threw sand on it.

Q. Do you remember back in 1962? A. Yes, sir.

Q. Do you remember a series of three snowstorms, each on a Friday? A. I know we had snowstorms. I don't know.

Q. Do you remember when they all hit on a Friday when the weekend was beginning? A. If I remember, it was. It could have happened on a [60] Wednesday, too.

Q. Do you recall this snowstorm in particular? A. Yes.

Q. Is it not a fact that this was the heaviest snowstorm of all of the December snowstorms? A. That, I couldn't say for sure. We had some very bad ones.

* * *

RALPH L. ROBINSON

* * *

DIRECT EXAMINATION

BY MR. LAMENSDORF:

Q. Officer Robinson, will you please state your full name? A. My name is Ralph L. Robinson.

* * *

[61] Q. Will you please speak into the microphone and I think you can be heard? Officer Robinson, are you a member of the Metropolitan Police? A. I am.

Q. How long have you been a member of the Metropolitan Police? A. Approximately eight years, now.

Q. To what part of the Metropolitan Police Department are you presently attached? A. I am presently attached to the 7th Precinct.

Q. Directing your attention to December 21, 1962, were you on that day a member of the Metropolitan Police? A. I was.

Q. To what Precinct were you attached at that time? A. I was assigned to the 3rd Precinct.

Q. Did you work on that particular day? A. I did, sir.

Q. Do you recall what your hours were? A. Yes, sir.

Q. What were they? [62] A. 12:00 a.m. to 8:00 a.m.

Q. In other words, you started to work, actually, at 12:00 a.m. on December 22, 1962 and worked until 8:00 a.m. that morning? A. Yes, sir.

Q. Did you receive a call to come to 1900 F Street about the time you came to work in regard to a matter, or shortly thereafter? A. Yes, sir.

Q. What was the occasion of your going there at that time? A. I had received a report at the George Washington Hospital to the effect there had been a fall on public space.

Q. And did you then go to 1900 F Street? A. I did.

Q. Would you describe what you saw there at 1900 F Street when you arrived? Tell us, first, approximately what time you arrived there. A. The time was approximately between 12:30 a.m. and 1:00 a.m.

Q. Did you go to 1900 F Street? A. Yes, sir.

Q. What did you see there in regard to the areaway and the sidewalk in front of 1900 F Street? [63] A. The areaway and the sidewalk was a sheet of ice.

* * *

Q. Officer, I hand you Plaintiff's Exhibit No. 1 and I ask you if you recognize the diagram in relationship to the areaway and the public sidewalk in front of 1900 F Street? A. I do, sir.

Q. In regard to the areaway and the public sidewalk as shown on Plaintiff's Exhibit 1, can you describe and tell us whether or not that entire areaway and public sidewalk there is concrete? A. Yes, it is.

Q. Is it distinguishable between the areaway and the public sidewalk? A. No, not necessarily.

Q. In regard to the sheet of ice that you found there, where did that sheet of ice extend and what did it cover? A. To the best of my recollection, the ice was a general condition that covered the whole sidewalk area in the block. Both sides of the block were all ice and

snow. In [64] this particular area there was ice from the doorway to the curbing. It covered the complete area, in other words.

Q. In regard to the surrounding areas in that particular vicinity, was there snow on the ground? A. There was some snow.

Q. Was there a substantial amount of snow? A. By that, what do you mean?

Q. Did we have a substantial snowfall that day? A. We did have a snowfall.

Q. Did you have any occasion to walk on the areas where there was unshoveled snow? A. Yes, sir.

Q. Were you able to walk in the areas where the snow was unshoveled?

MR. CLARKE: I object to that. He is referring to an area of unshoveled snow as opposed to an area where the snow is shoveled.

THE COURT: What is your objection?

MR. CLARKE: It would be immaterial.

THE COURT: It may lead to something. I will allow it in. I thought your objection might be to the fact that this question is not limited to the immediate adjacent area.

MR. LAMENSDORF: That was in my preface to the question, Your Honor, and the surrounding area to this particular [65] sidewalk area.

THE COURT: What do you mean by "surrounding area"?

MR. LAMENSDORF: In the immediate vicinity, but not including the public sidewalk and the areaway in front.

THE COURT: I will overrule the objection.

(The previous question was read by the reporter as recorded above.)

THE WITNESS: Yes.

BY MR. LAMENSDORF:

Q. Officer, where were you when you first received notice of this incident? A. I was at the George Washington Hospital in the Emergency Room.

Q. Did you see Mr. Robinson at that time? A. I did, briefly.

Q. Were you able to speak to him? A. Very briefly.

Q. What information, if any, did you get from him? A. I received his last name and I asked him where he fell. He told me on the sidewalk in front of his apartment.

* * *

[66]

CROSS EXAMINATION

BY MR. CLARKE:

Q. You filed a report of this incident, didn't you, Officer? A. Yes, sir.

Q. And you have had an occasion to read that report before coming here, and did you bring the report with you? A. No, sir, I didn't.

Q. Do you recall whether, in that report, you stated that the man was alighting from a taxicab, slipped on the ice and fell to the public sidewalk? A. I do not recall the particular term 'public sidewalk'. I recall that I included in the report that while alighting from a cab, he slipped and fell to the sidewalk, as I recall.

Q. Did you take that word "sidewalk" to mean public sidewalk? A. How do you mean that?

Q. When you went to inspect the scene of the accident, isn't it your duty to see if the man had fallen on the public sidewalk? A. In police work, our primary objective is the public sidewalk.

Q. Is that why you inspected this accident? A. Yes, sir.

[67] Q. Because you thought it was on the public sidewalk? A. Yes, sir.

Q. And this was after you had talked to this man, Mr. Robinson? A. Yes, sir.

Q. When you inspected the sidewalk, other than the ice, did you find any defects of any kind? A. No, sir.

Q. I assume you inspected this sidewalk after the man had been transported from the scene to the hospital? A. That is correct.

Q. You have given that time as between 12:30 and 1:00 a.m.? A. Approximately.

Q. Could it have been after 1:00 o'clock? A. I don't think so. I made my report at the Precinct at 1:00.

Q. I have a memo here that shows the ambulance didn't arrive until 1:03. Would that refresh your memory? A. Not at all. I didn't see the ambulance.

Q. Did you smell any alcohol on Mr. Robinson's breath at the hospital? A. No.

Q. Did you attempt to ascertain whether he had had any [68] alcohol? A. No, sir.

Q. And did you make your report of this inspection of the sidewalk to the Corporation Counsel's Office? A. Yes, sir.

Q. Did you also make a report that it was snowing at the time of your inspection? A. No, sir. That condition which prevailed throughout the District Area was after a 24-hour period.

Q. At the time you inspected, snow was falling? A. No, sir. There was a mist at that time.

Q. Did your report mention that a snow had been falling? A. Yes, sir.

Q. Tell us what that report said. A. It was typed by the station clerk and it included, for police formality in the area, that it was snowing throughout the District and it had prevailed for quite some time.

* * *

REDIRECT EXAMINATION

BY MR. LAMENS DORF:

Q. Were you able to get the details from Mr. Robinson as to exactly where he fell? A. No, sir.

[69] Was he in condition at that time to give you that information? A. No, sir.

Q. Under your duties, are you obligated to determine whether the location is or is not a public sidewalk? A. No, sir.

* * *

Q. Officer, in that regard, if you had made an inspection and the fall was on the walk area adjacent to the public sidewalk, would you still have reported that to the Corporation Counsel? A. Yes, sir.

* * *

[70] MR. LAMENSDORF: If Your Honor please, at this time I would like to offer in evidence Plaintiff's Interrogatories to Defendants numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 14 and the Defendants' answers thereto which are signed by Roberta Hayes, Resident Manager.

MR. CLARKE: I would object, Your Honor, because Mrs. Hayes is seated with me. She has had her deposition taken. She can give free answers and I think the best evidence is Mrs. Hayes.

THE COURT: Objection overruled. * * *

[72]

RALPH L. ROBINSON

[73] was recalled to the witness stand, and having been previously sworn, was examined and testified further as follows:

REDIRECT EXAMINATION (Cont'd.)

BY MR. LAMENSDORF:

Q. Officer Robinson, when you went to 1900 F Street and examined the sidewalk and the areaway, did you see any sand or any other abrasives on the sidewalk or areaway in front of 1900 F Street? A. No, sir.

MR. LAMENSDORF: That is all.

RECROSS EXAMINATION (Cont'd.)

BY MR. CLARKE:

Q. Did you get down and look to see if there was any sand underneath the ice? A. No, sir. If there was sand, it could have easily been seen.

Q. Did you get down to see if there was sand under the ice? A. No, sir.

* * *

[74]

ROBERTA R. HAYES

* * *

DIRECT EXAMINATION

BY MR. LAMENSDORF:

Q. Would you state your full name, please? A. Robert R. Hayes.

Q. Where do you presently live, Mrs. Hayes? A. 705 - 18th St., N.W.

Q. What is your present employment? A. I am Manager of the Park Central Hotel.

Q. That is located now at the address you have just given? A. Yes, sir.

Q. Who is your employer? A. I am employed by the owner of the Park Central Apartment Hotel.

* * *

Q. Directing your attention to December of 1962, by whom were you then employed? A. By Randall H. Hagner & Co.

[75] Q. What was your position at that time? A. I was Resident Manager of the Park Central Apartments.

Q. Where was the Park Central Apartments located then? A. 1900 F Street, N.W.

Q. Was that also known as the Park Central Hotel Apartments at that time? A. Yes, sir.

Q. How many apartments did you have, and how many hotel facilities did you have at that time? A. There were 317 units in the building, and 69 or 70 transient accommodations.

Q. Are you the same lady who signed certain answers to Plaintiff's interrogatories in this case and which appear to have been signed on June 12, 1963? A. Yes, sir.

Q. In December of 1962, and for some time prior thereto, I understand you were the Manager of the Apartment Hotel at 1900 F Street, N.W.? A. Yes, sir.

Q. How long had you been Manager there? A. About ten years, sir.

Q. Directing your attention to December 21, 1962, do you recall that was a Friday? A. Yes, sir.

[76] Q. And do you recall it snowed a great deal that day? A. Yes, it snowed all day long.

Q. Did you have any one of your employees clear the sidewalk directly in front of the Apartment Hotel on F Street? A. Yes, sir.

Q. Do you have only one entrance to that Apartment Hotel? A. One public entrance, yes, sir.

* * *

Q. Could you describe the entranceway into the hotel, itself, the Apartment Hotel? A. Well, it is best described as it was described before as a "T", with the sidewalk crossing and an areaway directly in front of the front door.

Q. All of that is concrete? A. Yes, sir.

* * *

Q. And it is all the same type of concrete, is that right? A. Yes, sir.

* * *

[77] BY MR. LAMENSDORF:

Q. Mrs. Hayes, directing your attention back to December 21, 1962, would you tell us how many times you had the sidewalk and the entranceway cleaned that day? A. It is difficult to say how many times. It was done continually all day long. I had a crew out there all day long. As the snow fell, they would go out and shovel it off and use the chemical we were using at the time.

Q. What was the name of the substance? A. We were using "Sno-Go" or "Quik-Melt." They are trade names.

Q. Directing your attention to July 8, 1963, your deposition was taken at that time? A. Yes, sir.

Q. At that time, in reading from page 6, in your answer, did you not say that you cleaned the sidewalk down to the cement three times

that day, early in the morning, at noon, and at 5:00 o'clock. A. It was done completely at those times, yes.

Q. You named certain shifts. Didn't you also have a [78] shift that came on at 3:00 o'clock in the afternoon to 11:00 at night? A. Yes, sir.

Q. Who was on that shift? A. John Kersey.

Q. And in addition to these shifts, you also had someone who lived on the premises, known as the Engineer, did you not? A. Yes, sir.

Q. What was his name? A. William McAuliffe.

* * *

Q. * * * Was the areaway and the public sidewalk included in the cleaning which was done? A. Yes, sir.

Q. Was the areaway and the public sidewalk cleaned in the evening between 9:00 and 9:30? [79] A. My instructions were —

Q. Answer "yes" or "no," please. A. I am sorry. I don't know.

Q. Directing your attention to July 8, 1963, reading from page 6, was the question put to you:

"Q. Now, was it cleaned again in the evening between 9:00 or 9:30, or after 9:00 o'clock?

"A. No."

Did you give that answer to the question put? A. Yes, sir.

Q. Which is correct, that you do not know now, or that you did know in July, 1963, and that it was not cleaned after 9:00 or 9:30 p.m.? A. My instructions were not at that time to clean it. I have no way of knowing at this point.

Q. Well, to read on to refresh your recollection, Mrs. Hayes, you answered "no" and I said:

"Q. Now, Mrs. Hayes, I wish you would look at your answers. I think you said in response to Interrogatory 14 that something was done between 9:30 and 10:00 o'clock.

"A. Yes. You asked me if it was cleaned.

"Q. I see. That's right. That's true. But it was not cleaned?

"A. No.

[80] "Q. But it was only sanded?

"A. Sanded, correct."

Is that correct?

A. Yes, sir.

Q. It, then, was sanded between 9:00 and 9:30? A. Yes, sir.

Q. Who sanded it? A. John Kersey.

* * *

Q. Mrs. Hayes, what did you mean, or what do you mean by cleaning the sidewalk and the areaway during a snow period? A. I mean cleaning the sidewalk, removing the snow down to the cement and putting down the chemical.

Q. Is it necessary, before putting down a chemical, to completely remove the snow? A. No, it is not necessary.

Q. Is it better procedure? A. Yes, sir.

Q. Does the chemical have much effect to be placed on top of the snow? [81] A. It has some melting effect, but it is best if it is put on the cement to keep the snow from melting as it falls.

Q. At the 5:00 p.m. cleaning, do you know the names of your employees who took care of that job? A. Yes, sir. James Nickens and John Thomas.

Q. And James Nickens and John Thomas were the last ones who actually exposed the cement? A. Yes, sir.

Q. What time did John Thomas go off of work that day, December 21? A. After 4:00 o'clock, sir.

Q. Was it between 4:00 and 5:00? A. Yes, sir.

Q. What time did Nickens leave? A. After 5:00, sir.

Q. Was he off at 5:00? A. Yes, sir.

Q. Did you have any other man do any shoveling on that day other than Nickens, Thomas and Kersey? A. No, sir.

Q. How about Theodore Rutledge? A. He was on in the early morning at 7:00 o'clock.

Q. Did he do any shoveling that morning? A. Yes, sir; early morning.

[82] Q. Between the 4:00 and 5:00 o'clock cleaning on December 21, did your employees clean directly in front of the entrance of 1900 F Street all the way down to the curb which would be the south curb of F Street? A. Yes, sir.

Q. So they cleared the public sidewalk, too? A. Yes, sir.

Q. Between the public sidewalk and the F Street curb which is, sometimes, referred to as the "tree area," was that, too, paved? A. Yes, sir.

Q. Was it paved all the way down to F Street? A. Yes, sir, except for the tree spaces.

Q. Part is paved and part is not, and it is not paved where the tree spaces are located? A. Yes.

Q. Mrs. Hayes, did you specifically direct John Kersey to apply sand between 9:00 and 9:30 p.m. on December 21? A. Yes, sir.

Q. Previous to your direction to John Kersey, did you have occasion to examine the areaway and the sidewalk in front of 1900 F Street? A. Not directly, sir; from a window.

Q. Was that your apartment in the building? [83] A. Yes, sir.

Q. What apartment was that? A. 502.

Q. Did you look out of that window and observe the areaway and the public sidewalk in front of 1900 F Street? A. Yes, sir.

Q. What did you observe? A. It had a light covering on it. It had been shoveled and cleaned as late as 5:00 o'clock, and the other area around it had much heavier snow and it was slush, and it appeared at this time that the storm was snow. There was no precipitation at that time. I picked the 'phone up and called the Desk and told Kersey to put sand on the area at this point.

Q. What time was that? A. It was approximately 9:30.

Q. And you thought the areaway and the sidewalk in front of 1900 F Street needed attention, didn't you? A. Yes, I did.

Q. Was there any particular reason you requested sand be put down at that time? A. Yes, sir, because it was very cold and freezing, and sand has a better effect on this freezing condition late at night than putting down chemical.

[84] Q. In other words, you mean by that that sand is a better media to eliminate slipperyness? A. Yes, sir.

Q. Did you check on John Kersey to see if he had followed your instructions? A. No, sir.

Q. Mrs. Hayes, did you receive notice that Mr. Robinson had been injured? A. Yes, sir.

Q. How did you receive that notice? A. I was called by the Night Desk Clerk.

Q. What was his name? A. Michael Melville.

Q. How long had he been employed by you? A. About five or six weeks.

Q. Mrs. Hayes, you were in charge of all of the employees, were you not? A. Yes, sir.

Q. When you received the call about Mr. Robinson, did you go downstairs? A. Not right away, sir. I had retired. I was in bed when I received the call.

Q. Did you go down as promptly as you could? A. Yes, sir.

[85] Q. And when you arrived at the lobby, was Mr. Robinson still there? A. No. He had been taken away by the ambulance.

Q. Did you examine the areaway and the public sidewalk in front of 1900 F Street? A. Yes, I did, sir.

Q. About what time was that? A. I would say it was around 1:00 a.m.

Q. And what did you find in regard to the condition of the areaway and the public sidewalk directly in front of 1900 F Street? A. It was completely covered by ice.

Q. Did you find any sand on top of the ice? A. Not on top of the ice, but there was sand underneath this thin coating of ice on top, and I

went out specifically to look if it had been put there, and it was there. It had remained and had frozen again after the 9:30 application, and there was brown sand underneath the ice.

Q. Mrs. Hayes, do you intend to infer by your testimony that sand was put down between 9:00 and 9:30? A. My instructions to John Kersey was to put it down, so he was the only person.

Q. Did you ever inquire of John Kersey if he had ever put it down? [86] A. No, sir, I didn't.

Q. John Kersey was the only individual who could have put the sand down? A. Yes, sir.

Q. Did you have ample sand available to put down? A. Yes, sir.

Q. Where was it located? A. In the storage area.

Q. Was it in a big wood box container? A. Yes, sir.

Q. Tell us exactly what examination of the areaway and the public sidewalk you made to determine there was sand? A. I got right down and looked at it.

* * *

[87] Q. Was there a heavy application of sand, or a light application of sand that you saw? A. I couldn't say. Underneath the ice, I could just seen the brown sand.

Q. Directing your attention to your deposition, page 15, at the time your deposition was taken, didn't you say at that time in response to that specific question: "It was a good application of sand"? A. Well, that would not make it heavy, if you are going to say "heavy". You seem to be drawing a fine line. It was a good application.

Q. Was it a good application of sand? A. Yes, sir. I could see it under the coating of ice.

Q. What do you mean by "a good coating of sand"? A. The area was covered.

Q. When you say "the area was covered," what area was covered with sand, and what area did you examine? A. The walkway in front of the building.

Q. Did you also inspect the sidewalk in front of the building? A. Yes, sir.

Q. Was there an application of sand, as you saw it, there? [88] A. Yes, sir.

* * *

[89] Q. Did you think, when you went out to examine the walkway area and the sidewalk, that it then needed sand?

MR. CLARKE: I would object, Your Honor. This was after the fall.

THE COURT: Objection overruled.

THE WITNESS: Will you repeat the question, please?

MR. LAMENSDORF: May I ask the reporter to repeat it?

THE COURT: You may read it.

(The preceding question was read by the reporter as recorded above.)

THE WITNESS: Yes, sir.

BY MR. LAMENSDORF:

Q. Your answer is that it needed sand at that time? A. Yes, sir.

Q. When you went out to look at the walkway area and the sidewalk, did anybody accompany you? A. Yes, sir.

Q. Who was that? A. Mr. Rarden.

Q. Did Mr. Melville also go with you? A. He may have come out to the front area just briefly, but he was operating the switchboard and had to be behind the Desk as much as possible. He may have walked to the front entrance.

[90] Q. Did Mr. Melville, your night man, inform you that he and Mr. Rarden had picked up Mr. Robinson? A. Yes, sir.

Q. Did he tell you where he had picked him up? A. They pointed out the area, sir.

Q. What area did they point out? A. It was right on the corner, as the sketch shows, right on the sidewalk.

Q. If I show you Plaintiff's Exhibit 1 and point out to you an 'X'

marked in red, would you tell me whether or not that is the location where they said they picked him up? (Plaintiff's Exhibit 1 was offered to the witness.) A. It was right by that corner in that general location. I couldn't say right at that point.

Q. They did not specifically go over and point to the exact spot?

A. No.

* * *

[91] Q. Did you make any notes of this incident? A. Yes, sir.

Q. And did you also promptly make a report of this incident? A. Yes, sir, I did.

* * *

CROSS EXAMINATION

BY MR. CLARKE:

Q. Mrs. Hayes, you have indicated that there were three complete cleanings of the sidewalk area? [92] A. Yes, sir.

Q. What did you mean by complete cleanings? A. That the snow was removed down to the cement and the chemical was applied.

Q. Between the complete removing of the snow, was there any other work done to the sidewalk area? A. They go out, sometimes, with a broom and sweep a little bit of snow away and start again. It was a longer area to go around and it took three hours to do a complete job all the way around.

Q. What do you mean by "a longer area to go around"? A. From the left side of the building, the sidewalk went around F Street and down 19th Street, and we always shovel this complete area around the building.

Q. Would it be a fair statement to say that during the daylight hours, you had three men working on the sidewalk all the time? A. Almost all the time, yes.

Q. Plus the application of the chemical? A. Yes, sir.

Q. Had you had other snow storms around the same time, around

December? A. Around December, we had one storm after another which were very bad ones with a lot of freezing and all-day storms.

* * *

[93] Q. Will you tell us of the other snowstorms? A. On the Friday before that and overnight, on Saturday, there was another storm.

Q. Was there one following this one of December 21, 1962? A. Yes, sir.

Q. When Mr. Kersey came on, do you know whether or not he was directed to take care of the sidewalk area? A. When he came on, he helped the other boys that had been working during the daytime because he came on at 3:00 o'clock.

Q. From 3:00 to 11:00, what were his duties? A. He was the general porter for the evening. He had cleaning to do with the vacuum, and the basement area, he kept clean and polished, and the laundry room.

Q. Was he instructed to watch the sidewalk that evening? A. Yes, sir.

[94] Q. Who gave him those instructions? A. These were his general duties.

Q. Did you see Mr. Kersey doing anything to the sidewalk area that evening? A. At one time, I looked out of my window, and he was out there earlier.

Q. When was this? A. Oh, maybe 6:00 or 7:00 o'clock, or so.

Q. What was he doing on that occasion? A. He had the bucket with him that they carry the sand or chemical in.

Q. Mrs. Hayes, in order to keep abreast of the weather that night, did you listen to the radio, or do anything else? A. Yes, sir. I had listened to the weather report.

Q. Did you do that to keep abreast of the weather report? A. Yes, sir.

Q. And do you recall what the weather reports were? A. As I remember, the temperature was dropping and it was freezing.

Q. Is that when you ordered the sand? A. Yes, sir.

Q. Do you recall what time you retired that evening? A. Shortly after 10:00 o'clock.

[95] Q. You have indicated that you left an order for Mr. Kersey to put sand down at 9:30. Who did you give that order to? A. I phoned the telephone operator on duty and told her to locate Kersey and tell him to put sand on the walkway.

Q. You indicated the use of 'brown sand'. Are you distinguishing that from some other type of sand? A. Yes, sir. We use white sand for cigarette urns and do not use white sand for sanding sidewalks.

Q. Did you keep the brown sand separated from the white sand? A. Yes, sir.

Q. What was the purpose of having the brown sand? A. The brown sand was ordered each fall for such purposes as sanding sidewalks.

THE COURT: What was the yellow sand used for?

THE WITNESS: The white sand is used for cigarette urns.

THE COURT: What is the distinction?

THE WITNESS: For cigarettes, the white sand is a fine sand and it wouldn't help on a sidewalk.

BY MR. CLARKE:

Q. Would the brown sand be a coarse sand as compared to the white sand? [96] A. Yes, sir.

* * *

Q. At the time you went out at 1:00 or 1:30, was there still a rain or mist falling? A. At this point, it had just about stopped, although I had on a scarf on my head, as I recall, but it was stopping at that point.

Q. You were shown this exhibit. I will ask you if there is any shrubbery or curbing around the entranceway to the apartment house? A. There is a little curb all the way around the grass area.

Q. How high is that curb? [97] A. About 6 inches; one of the little cement curbs they use for trims.

Q. Is there anything else, other than the trimming curb, you have

told us about? A. Directly behind the curb there were plantings all the way around of little shrubs.

Q. Show with your hands how high shrubs were. A. Approximately 18 inches high.

* * *

Q. Also referring to Plaintiff's Exhibit 1, I want to ask you this question: When the boys shoveled the sidewalk area in the Park Central down to the public sidewalk, did they continue to shovel it from the public sidewalk into the street? A. They always made an area so that a cab, stopping in front of the building, a person could alight without having to get out of the cab into snow.

* * *

[98] Q. How far would they shovel the snow from the curb into the street and make that path? A. Oh, a good 6 feet, so when a cab stopped and the door opened, there would be an adequate place to get out.

Q. In other words, they shoveled the snow from the front door 6 feet into the street so that a person could walk out and get a cab? A. No; 6 feet in width. The opening, whatever it would be, would be 6 feet wide.

* * *

Q. Was this a deep snow on the night of December 21, and the morning of December 22? A. Five or six inches.

Q. Did the snow form a bank up near the curb area? [99] A. Yes, sir.

Q. Earlier in the day, had the boys removed this snow? A. Yes, sir.

Q. If I understand you correctly, you could walk out of the door of the Park Central Apartments and you could use the private sidewalk and get off to the public sidewalk and step over the area the boys had cleared in the street to get a cab. A. Yes, sir. That is the way it was done earlier in the evening. If the street was cleaned earlier in the evening, I am not certain that the street, altogether, was clear at this point.

Q. If a plow had come along, it would have closed the area up? A. Slightly, yes, sir.

Q. Mrs. Hayes, did you point out the fact that there was sand under this thin coating of ice? A. I remember mentioning it to Mr. Rarden.

Q. Was this while you were inspecting it before, or later? A. This was while I was inspecting it.

Q. Did he get down to look at the area to see if there was any sand there? A. No.

[100] Q. Did you dig into the ice to see the sand? A. No, I did not.

MR. CLARKE: Thank you.

REDIRECT EXAMINATION

BY MR. LAMENSDORF:

Q. Mrs. Hayes, when you went out with Mr. Rarden, was it not Mr. Rarden who told you at that time that the walk area on the sidewalk needed something done to it, either sand, or something else?

MR. CLARKE: I would object to this. This was after the fall.

THE COURT: Sustained.

MR. LAMENSDORF: Mr. Clarke opened it up.

THE COURT: How did he open it up?

MR. LAMENSDORF: He asked if Mrs. Hayes pointed out sand to any person. Mrs. Hayes said she pointed it out to Mr. Rarden.

THE COURT: I don't think it is sufficient to open up a hearsay statement, Mr. Lamensdorf.

BY MR. LAMENSDORF:

Q. Mrs. Hayes, as I understand it, Mr. Kersey was on from 3:00 in the afternoon until 11:00 at night? A. Yes, sir.

Q. And on examination by Mr. Clarke, I think you said [101] you saw Mr. Kersey in front of the building sometime between 6:00 and 7:00 with a bucket? A. Yes, sir.

Q. Did you know what he had in that bucket, if anything? A. No, sir.

Q. As I understand it, the purpose of the brown sand was for the inclement weather, is that correct? A. For the icy condition.

Q. When the areaway was cleaned, as I understand it, the areaway in front of 1900 F Street was cleaned past, through and beyond the public sidewalk to the curb? A. Yes, sir.

* * *

Q. What happened to the snow that was removed from the areaway and the public sidewalk? Where was it shoveled to? A. Along the gutter area.

Q. Was the street in front, or to the north of the curb, clear, or was that slushy and sloppy at that time that night? A. The street where, sir?

Q. The street directly in front of 1900 F Street.

* * *

[102] THE WITNESS: The sidewalk and the street was in the same condition. Also, there was glary ice in the gutter. There may have been slush in that gutter area, too. I don't know.

BY MR. LAMENSDORF:

Q. You mean to say that the street portion, where the vehicles traveled in front of 1900 F Street, was glary ice? A. Yes, sir. There were two young ladies coming into the building to see some young men, and they were just skating across the main street. They could hardly stand up.

Q. What time was that, Mrs. Hayes? A. After 1:00 o'clock.

Q. Were vehicles blocked, or were they able to travel in the street portion? A. I didn't notice the vehicles at all. I don't think there was anything out there at the time I was out there.

* * *

[104] MR. LAMENSDORF: If Your Honor please, I would like to offer in evidence the local climatological data for the District of Columbia for the month of December, 1962, which has been certified by Mr. Woolum, Meteorologist in Charge.

[105] THE COURT: It will be admitted.

THE CLERK: Plaintiff's Exhibit 2 marked in evidence.

(Plaintiff's Exhibit No. 2 was received in evidence.)

THE COURT: I presume what is really relevant here is the report for December 21 and December 22, is that correct?

* * *

THE COURT: If you will bear with me a moment while I go over these exhibits. 5.3 inches of snow on the 21st?

* * *

THE COURT: The temperature chart is shown on there. * * *

* * *

[106] MR. LAMENSDORF: Your Honor, other than the deposition of Mr. Rarden and one question I wanted to put to John Kersey, whom Mr. Clarke tells me will be here at 1:45, that is all the plaintiff has on liability.

THE COURT: If you want to start putting on your case in the meantime, without prejudice, you may.

MR. CLARKE: I will be glad to. Call Mr. Nickens.

Thereupon:

JAMES NICKENS

was called as a witness on behalf of the defendants, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CLARKE:

Q. Will you give your name, please? A. James Nickens — N-i-c-k-e-n-s.

Q. Where do you live? A. 616 Madison Street, N.W.

* * *

[107] Q. Were you ever employed by the Randall H. Hagner Co. at 1900 F Street, N.W.? A. Yes, sir.

Q. When were you employed there? A. From 1956, June and July, to about two years ago.

Q. From 1956 to two years ago? A. Yes, sir.

Q. Were you there on the 21st day of December, 1962? A. Yes, sir.

Q. What were your hours of employment on that occasion? A. From 9:00 to about 5:00.

Q. Was that the day when they had a big snowstorm? A. Yes, sir.

[108] Q. When you came to work at 9:00 o'clock that day, what were you supposed to do that day? A. When I first came in, I was supposed to clean up the front, but if it snowed, or anything, I was to go to the front and clean the sidewalk the very first thing.

Q. Do you recall this was the Friday before Christmas, that year? A. Yes, sir.

Q. Do you recall actually going out and cleaning the sidewalk? A. Yes, sir.

Q. Who was working with you at that time? A. Mr. John Thomas.

* * *

Q. Was anybody else working with you? A. Not at all until 3:00 o'clock.

Q. May I refresh your memory and ask you if you worked with a Mr. Rutledge? A. Yes. He came on at 7:00 to 3:00.

Q. When you came on, it was what time? A. 9:00.

[109] Q. When you came on at 9:00 o'clock, was Mr. Rutledge working on the sidewalk? A. Mr. Thomas was there, but I didn't see Rutledge there at that time.

Q. During the day, did you see Mr. Rutledge? A. Yes, sir. He came up.

Q. Did you concentrate all of your efforts on the sidewalk? A. Just about the best portion of the day, cleaning the sidewalk.

Q. Who was out there with you? A. Mr. John Thomas.

Q. Did you see Mr. Rutledge, on occasions, out there with you?

A. Yes, sir.

Q. How did you clean the sidewalk area that day? A. With a snow shovel.

Q. And after you had cleaned the area with a snow shovel, what did you do? A. We put on "Sno-Go" or salt on which kept melting the snow.

Q. Mr. Nickens, do you know how many times you cleaned the sidewalk area that day? A. Quite a few times that day, and we used "Sno-Go" to [110] melt the snow away.

Q. Why did you apply "Sno-Go"? A. To melt the snow.

Q. What is "Sno-Go"? A. It is a crystalized kind of stuff that melts and dissolves the ice and snow whenever you put it on.

Q. Did it snow during the entire day? A. Yes, sir.

Q. Would you apply this "Sno-Go" after you had cleaned the sidewalk? A. Every time we cleaned it off, we put "Sno-Go" down to melt the snow.

Q. And you were constantly doing this that day? A. Yes, sir.

Q. Did it continue to snow during the day even while you were shoveling? A. Yes, sir.

Q. Mr. Nickens, did you ever shovel a place out in front so that taxis could pull up to the front? A. Yes, sir. We always clean up the front, and to the curb, too. We always clean the front clear out to the sidewalk and street so that people could get out of the cabs.

Q. Did you do it on this particular day? A. Yes, sir.

[111] Q. When you went off, it was 5:00 o'clock, isn't that right? A. Yes, sir.

Q. What was the condition of the sidewalk at that time? A. I had it all cleaned up when I went off at 5:00.

Q. Had you put the "Sno-Go" or the chemical down? A. Yes, sir.

Q. And who was on duty when you left? A. Mr. John Kersey.

Q. When you say you had it all cleaned, you mean all of the street and all of 19th Street? A. Yes, sir.

Q. How about that area in front of the building from the door to the curb? A. That was clean, too.

Q. Was there any need for you to use sand at that time? A. No, sir, it was not.

Q. Have you on other occasions, used sand? A. Yes, sir.

Q. Do you know where the sand is kept? A. Yes, sir.

Q. Where is it kept? A. In the garage in the basement.

* * *

[112] Q. You wouldn't know the condition of the sidewalk at 1:00 o'clock in the morning, would you? A. No, sir.

* * *

CROSS EXAMINATION

BY MR. LAMENSDORF:

Q. Mr. Nickens, had you ever been instructed by Mrs. Hayes to put sand down? A. Yes, sir, I have. I have been told to put sand down.

Q. What were the occasions and reasons for your putting sand down? A. If it was slippery, she told me to put sand down.

Q. Did John Kersey help you when he came on? A. Yes, sir.

* * *

[114] MR. LAMENSDORF: Thank you, Your Honor. I would like to offer in evidence the following portions of the deposition of Michael Rarden which was taken on November 26, 1963.

THE COURT: Yes, sir.

MR. LAMENSDORF: Your Honor, I would like to offer, if you have the deposition, pages 3, 4, 5 and 6, through line 5 of page 7.

THE COURT: We will suspend while I read this. I like to read this as we go along. You say page 7?

MR. LAMENSDORF: Page 7, the fifth line. Then, I would like to offer, if Your Honor please, also, page 7 at line 20 beginning with the question: "When you went outside, did you go outside —

THE COURT: Yes.

MR. LAMENSDORF: Pages 8, 9 and 10, through page 11, line 4.

Thank you.

THE COURT: Very well.

MR. LAMENSDORF: Then, I would like to offer, Your Honor, beginning on page 12, line 11, with the question: "What was the condition of the walkway —

[115] THE COURT: Very well.

MR. LAMENSDORF: — including pages 13 and 14 through line 7, ending with the answer, "I did."

THE COURT: Very well.

MR. LAMENSDORF: Your Honor, the words, "I did" actually end on line 8. I said line 7, but it is on line 8. I would also like to offer on page 15, beginning at line 16, with the question: "At that time, you knew the resident manager, Mrs. Hayes, did you not" and continuing through page 16, line 12, which is an answer.

THE COURT: Very well.

MR. LAMENSDORF: Your Honor, I would now like to offer page 18, beginning with the first line with a question, through line 15 on that page which ends with an answer, "Yes, I am."

THE COURT: Very well.

MR. LAMENSDORF: Now, if Your Honor please, I would like to offer page 23, line 13, beginning with the question: "When you came back from the movie, did you walk on the south side of 19th Street" and continuing the rest of that page through page 24, line 4.

THE COURT: Very well.

MR. LAMENSDORF: Your Honor, I would like now to offer the last question on page 31: "Did you have any difficulty [116] walking over the unshoveled sidewalk area" and the answer which appears on the first line of page 32.

THE COURT: Very well.

MR. LAMENSDORF: Your Honor, I would like to offer now on

page 35, line 2, through the rest of page 35 down through line 19, which ends with the answer: "5' 10", and when I bent to pick him up."

THE COURT: Very well.

MR. LAMENSDORF: Your Honor, the last thing I would like to offer is on page 37, the last question put to Mr. Rarden by me, and his answer "Yes" which appears on the third line of page 38.

THE COURT: Very well. Do you have any other portion, Mr. Clarke, that you want to read in evidence?

MR. CLARKE: Yes, Your Honor. I don't think he covered my cross examination, which I would like to offer when I started examining Mr. Rarden on page 18 at the bottom.

THE COURT: Yes.

MR. CLARKE: Pages 19, 20, 21, 22. He has already included some of page 23, so I would like to include all of page 23.

THE COURT: Just a moment. We will suspend at this time while I am reading this.

Very well. What is next?

[117] MR. CLARKE: All of pages 24, 25, 26, 27 and 28, down to the first answer on page 29.

THE COURT: Very well. We will suspend for a moment while I read it.

MR. CLARKE: Yes, sir.

THE COURT: Very well. What is next?

MR. CLARKE: The last one was?

THE COURT: 29.

MR. CLARKE: All right. The last question on page 30 and continuing over to page 31, the last answer: "I think I just walked straight up the sidewalk."

THE COURT: Very well.

MR. CLARKE: And the first two questions on page 34.

THE COURT: Very well.

MR. CLARKE: Thank you, sir.

MR. LAMENSDORF: Would you please call John Kersey? There-upon:

JOHN KERSEY

was called as a witness on behalf of the plaintiff, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LAMENSDORF:

Q. Mr. Kersey, your name is John Kersey — K-e-r-s-e-y — is that right? [118] A. That is right.

* * *

Q. Directing your attention to December, 1962, were you then employed at 1900 F Street, N.W., the Park Central Apartments? A. Yes, sir.

Q. Do you recall a day in that month, December 21, 1962? A. Yes, sir.

Q. What were your employment hours that day? A. From 3:00 p.m. until 11:00 p.m.

Q. I want to ask you one question, Mr. Kersey: Did you sand the walkway in front of 1900 F Street, or the sidewalk in front of the walkway at any time on December 21, 1962? A. No, sir.

* * *

CROSS EXAMINATION

BY MR. CLARKE:

Q. What did you do with respect to the walkway in front of 1900 F Street, N.W. between 3:00 and 11:00 on December 21? A. I use 'Sno-Go' for removing snow and ice.

[119] Q. What did you do when you came to your employment that day? A. Put down 'Sno-Go'.

Q. Do you ever shovel it? A. Yes, sir, out on to the street.

Q. And then you shovel the 'Sno-Go' down to the street, or whatever it is? A. Yes, sir.

Q. Tell me what it is. A. It looks like snow, itself.

Q. What do you do with it? A. You throw it on the sidewalk.

Q. How many times did you do that between 3:00 and 11:00 that night? A. I can't recall the number of times, but I kept busy at the time.

Q. In addition to using the "Sno-Go", did you use your shovel if any ice accumulated? A. I scooped it. It is curved.

Q. What do you mean by "curved"? A. The shovel.

Q. Did you do that continuously from 3:00 o'clock in the afternoon until 11:00 at night? A. Yes, sir.

[120] Q. Did you receive a telephone request from Mrs. Hayes, the Manager, around 9:30? A. If I did, I don't remember it.

Q. Do you remember going out at 9:30 and putting some more "Sno-Go" down? A. The last trip, I went all the way around.

Q. What do you mean? A. From 1900 F Street around the Park Central; all the sidewalk area.

Q. How about the area right in front of the doors and out to the curb? A. I took care of that, too.

Q. When you went out at 11:00 o'clock, what door did you leave from? A. The front door.

Q. That is the door that goes out on F Street? A. Yes, sir.

Q. When you left to go out of that door, to go home, what was the condition of the area in front of the doorway? A. Nice and shipshape.

Q. What do you mean by that? A. Clear and clean. It was not slippery.

Q. Was there any ice or snow on the sidewalk area in front of the building from the door all the way to the curb [121] when you left at 11:00 o'clock? A. No, sir.

Q. Had you put down a chemical to keep it from freezing? A. That is right.

Q. When you left the building at 11:00 o'clock, which way did you walk? A. I walked down F Street to the bus stop at the corner.

Q. That would be the corner of 19th and F? A. Yes, sir. The bus stop is right there.

Q. When you left the premises at 1900 F Street and walked to the bus stop, that would be over the sidewalk area you were cleaning? A. Yes, sir.

Q. What was the condition of that area? A. All right.

Q. Was there any rain falling at that time? A. It was clear when I left to go home — clear, no snow, and nothing falling.

Q. It had been falling previously? A. Yes, sir; all the afternoon and evening.

Q. And when you left at 11:00, there was no precipitation, or nothing on the sidewalk? A. No, sir.

Q. Were the sidewalks wet or dry? [122] A. They were kind of damp. That stuff makes a moisture. It creates a moisture.

* * *

Q. No snow or ice? A. No.

Q. How long did you wait for the bus? A. Usually, 3 to 5 minutes.

Q. During that time, was there any change in the weather? A. No change.

Q. You took the bus and went home? A. Yes, sir.

Q. When you got home, did you notice any change in the weather?
A. When I got home, it was nice.

Q. How long did it take you to get home? A. 35 or 40 minutes. I live Northeast.

Q. During that time, there was no change in the weather? A. No.

Q. You are positive when you left at 11:00 o'clock, there was nothing wrong with the sidewalk, no ice or snow on it? A. There was not, sir.

Q. And you remember this night? A. I do. I was out in it. I should remember it.

* * *

[123]

REDIRECT EXAMINATION

BY MR. LAMENSDORF:

Q. Mr. Kersey, the last cleaning you did of the sidewalk was completed by 9:30 p.m., wasn't it? A. Probably 9:45; between 9:30 and 9:45.

Q. And you did nothing further to the walk area, or the sidewalk after 9:45, is that right? A. That is right.

Q. You had other duties in the building to do, did you not? A. Yes, sir.

Q. And you had to take care of the interior of the lobby and the downstairs, didn't you? A. Yes, sir; checked them all.

Q. When you went outside at 11:00 p.m., you say the [124] sidewalk was merely damp and it was, otherwise, safe? A. Yes, sir.

Q. Do you know of anyone else who could have possibly have cleaned the walk area, or sidewalk, other than between 9:45 p.m. and 11:00 p.m.? A. No, sir, I don't.

Q. And you say it was not snowing and it was not raining? A. No, sir.

Q. Wasn't there a freezing rain coming down when you left? A. Not when I left, no, sir.

Q. And there was no freezing rain when you got home? A. No, sir.

Q. You live on Evarts Street? A. Yes, sir.

Q. What hundred block? A. 900 block — 916.

Q. And you also say it was not too cold? A. Yes, sir.

Q. Was it below freezing? A. It might have been. I don't know the exact temperature.

* * *

[125] Q. Did anybody, that evening, or that afternoon, while you were at 1900 F Street, give you instructions to sand the walk area of the front sidewalk? A. If they did, I don't remember it.

Q. And if they did give it to you, you didn't do it, is that right? A. That is right.

Q. There was a big box of sand in the garage, was there not? A. Yes, sir.

Q. And what was the purpose of that sand? A. To cover emergencies, like storms.

Q. Was the purpose of that sand to use it when the sidewalk and the walk area was slippery? A. Yes, sir.

Q. Did you have access to that sand? A. Yes. I had a key.

Q. Was there also an Engineer on duty that evening? A. I don't recall. I guess there was. There usually is. He lived there.

Q. He lived on the premises? A. Yes, sir.

* * *

[126]

RECROSS EXAMINATION

BY MR. CLARKE:

Q. The Engineer didn't perform your duties, did he? A. No.

Q. You say you last cleaned the sidewalk at 9:45. Did you inspect the sidewalk before you took off at 11:00 o'clock? A. Yes, sir. I got down and went all around.

Q. Did it need further care? A. It didn't need any further attention.

* * *

MR. LAMENSDORF: If Your Honor please, that is the plaintiff's case.

MR. CLARKE: I would like to argue a motion, Your Honor.

THE COURT: Very well.

* * *

[139] MR. LAMENSDORF: If Your Honor please, in further amplification of that, I would like to ask permission and leave of the Court to offer another portion of the Weather Bureau report which shows, specifically, what was falling at that particular hour.

* * *

[140] MR. LAMENSDORF: If Your Honor please, what I propose to offer is from the District Meteorological Office of the Washington Airport and certified by Mr. Waldman, the same testimony I offered as Plaintiff's Exhibit 2.

* * *

THE COURT: I don't want to go that far, as yet. Is there any objection to reopening the case solely for the purpose of allowing the admission of this report?

MR. CLARKE: No objection.

THE COURT: Very well. The case is reopened. In that case, this document may be admitted in evidence.

THE CLERK: Plaintiff's Exhibit No. 3 in evidence.

(Plaintiff's Exhibit No. 3 was received in evidence.)

THE COURT: Suppose you tell the Court what the information is.

MR. LAMENSDORF: If Your Honor please, under the column, "Weather and Obstructions to Vision," it is stated that at 2357 hours, which would be at 11:57 p.m., there was under that column the symbol "ZR" which means freezing rain. [141] There was also at the time of 9:30 p.m., the symbol "ZR" or freezing rain. If Your Honor please, I offer that to show it was completely contrary to what Mr. Kersey said in regard to his testimony.

THE COURT: Tell me again what the condition was between the hours of 10:00, 11:00 and midnight.

MR. LAMENSDORF: Freezing rain.

* * *

[146] THE COURT: At the close of the plaintiff's case, the defendants moved to dismiss the complaint for failure to make out a case of liability on the part of either defendant.

It must be borne in mind that such a motion performs a different function in a nonjury case than it does in a trial by jury. In a jury trial, such a motion brings up the question of whether the plaintiff made out a prima facie case that is sufficient for the jury.

In a nonjury case, as appears from Rule 41(b) of [147] the Federal Rules of Civil Procedure, if such a motion is made, the Court, as trier of the facts, then may determine the facts and render a judgment against the plaintiff, or decline to render a judgment at the close of the evidence. This, of course, is the old equity practice that existed before the new Rules.

In this case, the plaintiff was a tenant in an apartment hotel. This hotel was, in part, occupied by permanent guests and, in part, by transients. It had 317 units. Of these 317, 69 were for transient occupancy.

The plaintiff, as a permanent tenant, was on his way home shortly after midnight on the night of December 21-22, 1962, and as he alighted from a taxicab, he started to walk across the sidewalk and the adjoining private walkway to the hotel entrance. It had been snowing all day, although the snow had ceased prior to this time. It is not disputed that the sidewalk and the approach to the hotel, both of which were of concrete, were covered with a sheet of ice. He slipped on the ice and was hurt.

It is the law of the District of Columbia that the owner of real property is under no duty to keep the sidewalk in front of his property clear of snow and ice for the benefit of pedestrians. The law is different, however, in respect to invitees, and the plaintiff was an invitee.

[148] The general principle of law is that the landlord is required to maintain means of ingress and egress in a reasonably safe condition for tenants and other invitees to his premises.

In *Pessagno v. Euclid Investment Company*, 77 U.S. App. D.C. 141, this general principle was made applicable, and it was ruled to extend to a duty on the part of the landlord to keep the approaches to an apartment house, or hotel, reasonably safe so that invitees would not be injured by the presence of an accumulation of snow or ice on the approaches.

The first question that is presented is whether the plaintiff fell on the public sidewalk or on the private property consisting of a walkway

between the sidewalk and the hotel door. The two were continuous and covered by the same type of concrete.

It is true that the burden of proof is upon the plaintiff to establish liability by a fair preponderance of the evidence. The plaintiff has not established affirmatively that the plaintiff fell on private property rather than on a public sidewalk. However, the spot at which he slipped and fell, according to the testimony, is on the very border line between the two.

If the place, where he fell, was a determinative factor, the case would be ruled by the decision in *Altemus v. [149] Talmadge*, 58 F.2d, 874, 877, also the decision of the Court of Appeals for this Circuit.

In that case, the plaintiff fell on a defect in the sidewalk, a part of which was on private property, and a part on the property of the District of Columbia. The Court held, under those circumstances, that both the District and the owner of the private property were liable.

This Court would go further, however, and would hold that the Rule requiring the owner of a multiple dwelling to provide a safe means of ingress and egress obviously is not limited to private property. It must include the portion of the sidewalk immediately adjoining or abutting the entrance to private property.

Ordinarily, a person cannot enter the building without first walking on the public sidewalk, and if there is a duty on the part of the building owner to provide a reasonably safe means of ingress and egress, it logically so follows that that duty is applicable to the portion of the public sidewalk that abuts the property as it does to that portion of the approach that is on the private property.

To be sure, in the *Pessagno* case, the fall took place on a private driveway of an apartment house, but the principles of that case would be equally applicable to the portion of the public sidewalk immediately adjoining or located [150] in front of the building because, otherwise, it may be repeated, a person cannot enter the building.

On either of these bases, the plaintiff in this case has overcome the first hurdle and has shown himself entitled to recover. If he can establish that his injuries were caused by some negligence on the part of the defendants within the principles just discussed, that brings us to the question of whether there is evidence justifying an inference of negligence on the part of the defendants.

In this case, it had been snowing all day, starting about 7:00 o'clock in the morning. The defendants had shifts of workmen shoveling snow off the private walkway and off the sidewalk in front of the building. As soon as they had finished shoveling snow, they would scatter a chemical which would expedite the melting of the snow. More snow fell, and the same operation was repeated.

However, these operations were suspended for the night at about 9:45 p.m. By the time the plaintiff arrived home at about 12:30 a.m., a sheet of ice had formed on top of the concrete and had formed on the sidewalk adjoining the building and the areaway between the sidewalk and the entrance. If the operations, to which reference has been made, had continued through the evening, it may be fairly inferred that this sheet of ice would not have been permitted to form.

[151] We are dealing here with a combination of apartment house and transient hotel. It can be reasonably inferred that in a transient hotel, guests come and go late of an evening, and, sometimes, in the early hours of the morning, and the duty to maintain the approaches to the building reasonably free of snow and ice are applicable during the night as it was during the day.

Under the circumstances, the Court is of the opinion that on the present state of the evidence, there is a basis for an inference of negligence on the part of the defendants, and if negligence existed, unquestionably it was that negligence that was the proximate cause of the accident.

There is no basis here for any contention of contributory negligence. The plaintiff alighted from the taxicab. He had the right to as-

sume that the approach to the hotel was of reasonably safe condition. He, apparently, did not realize, until he had walked a few steps, that the approaches were covered with a film or layer of ice. By that time, it was too late. Moreover, there is no showing that there was any other way by which he could reach the entrance to the hotel.

Bearing in mind that the burden of proof on the issue of contributory negligence is on the defendant, the Court is of the opinion that the evidence, so far introduced, shows [152] no basis of an inference of contributory negligence.

There is one case in this connection that rather emphasizes the difference of a state of facts where negligence exists and a state of facts where it does not exist. The facts in the Pessagno case, to which reference has been made, were pretty much similar to those in the instant case.

In *C. W. Simpson Company v. Langley*, 76 App. D.C. 365, a sleet storm had begun in the early hours of the morning. The janitor arose at 5:00 o'clock in the morning, and he proceeded to attend to the furnace because he was to furnish heat, and, later on, he walked out in order to take care of the conditions of the sidewalk. The plaintiff in that case had fallen on the slippery sidewalk previously to the janitor turning to this task. In other words, there, the fall took place within a couple of hours after the storm began and before it was reasonable to expect the landlord to start taking care of the sidewalk and render it less slippery than the storm had rendered it. The Pessagno case is distinguished there on the facts to which I have just referred.

There is one other circumstance to which reference might well be made. The defendants undertook the task of clearing the sidewalk to the same extent they had cleared the private walkway.

Even if there was no legal duty to do so, once a [153] person voluntarily undertakes to perform a task, he is held to the requirement that it should be done free of negligence, and if in this case there was

negligence in taking care of the private areaway, there was equal negligence of taking care of the private sidewalk.

For all of these reasons, the Court is of the opinion that the case should not be disposed of on this motion, but determined only after the defendants have rested their case.

The motion is denied.

* * *

OSCAR PACH

* * *

DIRECT EXAMINATION

BY MR. CLARKE:

Q. Give us your full name, please. A. Oscar Pach. P-a-c-h.

* * *

Q. Mr. Pach, on the night of December 21, or the morning hours of December 22, did you see a man fall in front of [154] 1900 F Street, N.W.? A. As far as the date goes, I don't remember what date it was, but I saw a man fall.

Q. Where were you living at that time? A. At the Park Central.

Q. Which apartment number? A. The apartment number was 408, I believe.

Q. Could it have been 404? A. Yes, 404.

Q. How long had you lived there, sir? A. About 18 years.

Q. Do you know what time of the day or night you saw this man fall? A. No, I don't.

Q. How did you happen to be up when this man fell? A. Well, I suppose I had to go to the toilet. I don't remember. It has been three years ago.

Q. Will you tell us what you saw? A. I looked out of the window to see if it was snowing, and I saw a taxi drive up and a man fall out of the taxi on to the ground. I kept on looking because I thought he might be drunk. I didn't know. He didn't move. So I went to the phone and

phoned the Office and said there was a man laying down on the ground. That is what I saw.

[155] Do you know whether the taxi pulled up to the curb or not?

A. No, I don't.

Q. Did you see that man take any steps after he got out of the taxi?

A. That, I can't remember. The only thing I can remember is that he got out of the taxi and he fell when he got out of the taxi.

Q. Mr. Pach, what window were you standing in when you saw this?

A. I don't remember.

Q. How many windows did you have that overlooked the F Street side of the building? A. I think there was one large one and two small ones.

Q. Do you know which one of these three windows you were looking out of? A. I said I don't remember.

Q. Mr. Pach, can you tell us whether or not the man fell in the street, or on the sidewalk, or on the walkway into the apartment? A. As I remember, he fell right there where the taxi was, so it must have been in the street, I imagine.

* * *

[156]

CROSS EXAMINATION

BY MR. LAMENSDORF:

Q. Mr. Pach, you do not independently recall the details, do you?

A. In what way do you mean "details"?

Q. In any way in regard to whether the man got out of the cab and fell afterward, or if he fell out of the cab. A. No. I should say he fell out of the cab.

Q. Do you recall that, or are you guessing, Mr. Pach? A. I couldn't say because it has been a long time ago, and, another thing, the only thing I remember is this man falling, and the taxicab went on. The taxi didn't wait, and I watched for quite a while — a few minutes, it seemed — until I went to the phone and phoned the Desk. Somewhere he fell. It must have been right where he got out of the taxi.

Q. You are assuming that, isn't that right, Mr. Pach? A. Naturally, I wasn't there. I was looking out of a four-story window.

Q. Do you always wear glasses? A. Yes, sir.

Q. Were you wearing glasses then? A. No, I don't believe I was.

Q. Mr. Pach, did you see me out in the corridor during the noon recess just about two hours ago? [157] A. I saw you once. I don't remember just when it was.

Q. Didn't you tell me at that time that you thought it was a nice day on this particular day we are talking about? A. I don't remember whether it was day or night.

Q. Actually, you don't have much independent knowledge of this incident, do you? A. The only recollection I have is I saw this man fall out of the taxi and waited there because he didn't move, and I thought probably he might be drunk. Naturally, I didn't know what was what, so I waited, and he didn't move, and then I went and called the Office to say there was a man outside on the street.

Q. Didn't you see him actually get out of the taxi and not fall, but get out of the taxi, Mr. Pach? A. I saw this man fall out of the taxi, or get out of the taxi. That, I don't know. I don't remember that part of it at all. I saw the taxi drive on and leave this man. I think he was on his face, as I remember.

* * *

[163]

DOROTHY ALLSHOUSE

called as a witness by the Defendants, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CLARKE:

Q. Will you give us your name, please? A. Mrs. Dorothy Allshouse.

Q. Mrs. Allshouse, on December 21, 1962 where were you employed? A. At the Park Central Hotel.

Q. What was your job at the Park Central Apartments [164] or Hotel? A. I was a desk clerk.

Q. Were you on duty that evening? A. Yes, I was.

Q. What hours were you on duty that evening? A. From 3 to 11.

Q. At any time that evening did you see Mr. Kersey about his employment? A. Yes, sir, I did.

Q. What time did you see him? A. Between 9:30 and 10 o'clock.

Q. And what did you see him doing? A. He was carrying a bucket through the lobby.

Q. Do you know what was in the bucket? A. I do not.

Q. Do you know whether anyone in the office had spoken to Mr. Kersey about that time? A. Well, I just don't understand you, sir.

Q. Did you hear anyone speak to Mr. Kersey about that time, 9 to 10 o'clock the night of December 21st, 1962? A. Well, I spoke to him as he went through the lobby.

Q. What did you say to him? A. I said, Where are you going, John?

* * *

[165]

Q. Did you receive a reply or an answer? A. He just nodded his head to me. I don't think he heard me.

* * *

[166]

LORAIN K. DICKERSON

called as a witness by the Defendants, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CLARKE:

Q. Will you give us your full name, please? A. Loraine K. Dickerson.

* * *

Q. Where were you employed on December 21st, 1962? A. At the Park Central Apartments, 19th and F Streets.

Q. What hours did you work on that day? A. 3 p.m. to 11.

Q. Did there come a time during your shift when you received a telephone call from the resident manager? A. Yes, there did.

[167] Q. About what time was that? A. I think about 9:30 p.m.

Q. And did you relay that message on to anyone? A. Yes, I relayed it on to a maintenance man named John Kersey.

Q. Is he the man that you saw in the witness room yesterday? A. Yes.

Q. And after you relayed this message on to the maintenance man, John Kersey, did you see him do anything? A. No.

Q. Did you see him walk through the lobby afterward? A. No.

Q. Could you from your place see him? A. I could have if I were looking, but I wasn't.

Q. Was Mrs. Dickerson — I'm sorry. Was Mrs. Allshouse working with you at that time? A. Yes.

Q. And would she have been on the desk at that time? A. She would have been on the desk.

Q. And would she have been facing the lobby? A. She could have been.

* * *

[168]

JOHN H. THOMAS

called as a witness by the Defendants, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CLARKE:

Q. Give us your full name, please. A. John Henry Thomas.

Q. Where do you live? A. 634 Morton Place, Northeast.

Q. Mr. Thomas, on December 21st, 1962 where were you employed? A. At Park Central Hotel, 19th and F.

Q. And what was the nature of your employment there? A. Well, I was a porter. I handle baggage and clean apartments and whatnot.

Q. On December 21, 1962 did you also have any job connected with cleaning sidewalks? A. Yes, I did.

[169] Q. Was that part of your employment? A. Yes, it were.

Q. Now, do you remember the Friday before Christmas 1962 or December 21, 1962? A. Yes, sir.

Q. What did you do on that day? A. Cleaned snow.

Q. What did you do on that day? A. Shoveled snow, cleaned sidewalks.

Q. What time did you report to work on that day? A. 8 o'clock in the morning.

Q. And what time did you go home on that day? A. 4 o'clock.

Q. And between 8 o'clock in the morning and 4 o'clock in the afternoon what did you do? A. Cleaned snow.

Q. The whole day? A. Back and forth, rest a while and clean snow a while.

Q. Cleaned snow and rest a little while and go back and clean snow? A. That's right, all day.

Q. How would you clean the snow? A. Well, I shoveled enough off the sidewalk so that [170] two people could walk side by side.

Q. After you had shoveled the snow off the sidewalk did you do anything else to the sidewalk area? A. Well, when I got the snow off I put on some salt, Snow-Glo.

Q. In other words, you would shovel the sidewalk so that two people could walk side by side and then you would put down salt or Snow-Glo? A. That's right.

Q. And how many times would you say that you shoveled the sidewalk that day? A. Well, I will say about five or six times. I don't know exactly.

* * *

Q. This was a continuous operation? A. All day, all day.

Q. Was it snowing all day? A. I don't recall. I think it was, but I don't recall whether it snowed all day or not.

Q. Who worked with you? A. James Nickerson and Rutledge; I don't know his first name.

[171] Q. Could it have been Theodore Rutledge? A. That is right.

Q. Do you know where he is now? A. I do not, no, sir.

Q. And there were three of you working, shoveling snow? A. Yes, sir.

Q. And did the three of you work there all day shoveling snow? A. No, we had to do different things. We'd go in and come a while and shovel snow a while and were inside a while.

Q. You'd go in for a while and then you'd come back to shovel the snow for a while? A. That's right.

Q. When you left at 4 o'clock what was the condition of the sidewalk? A. All clear, everything was all clear, all the way around.

Q. How about right in front of the building? A. Everything was clear.

Q. Did you have this chemical thrown on the sidewalk in front?
[172] A. That's right.

Q. And was this your usual procedure at all snow storms? A. All snow storms that is my usual procedure.

Q. When you left at 4 o'clock, Mr. Thomas, was there anyone that came on about that time? A. One come on at 3 o'clock.

Q. Who came on at 3 o'clock? A. John Kersey.

* * *

CROSS-EXAMINATION

BY MR. LAMENSDORF:

Q. Mr. Thomas, did you put any sand down at any time [173] during that day? A. No, sir.

* * *

ROBERTA HAYES

recalled as a witness by the Defendants, having been previously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION

BY MR. CLARKE:

Q. Mrs. Hayes, I wanted you to explain about the number of apartments and number of rooms in the hotel, in the apartment house, if you will. A. Well, there are a total of 317 apartments in the building, 60-some-odd of which were what we call transient accommodations.

Q. What is a transient accommodation? A. Well, at the Park Central, although we use the name Park Central Hotel, Apartment Hotel, we were only [174] operating as a lodging house. Most of these apartments were rented to people by the month and they were just as other tenants except these were apartments without kitchens. We had the old type bachelor efficiency apartment — bachelor apartment, where there was just a room and a bath. So we operated these because they were not readily rented any other way, as furnished with linens and so on. But we had no other facilities of a hotel. We had no restaurant, no cocktail lounge or anything that a regular hotel had. We had no doorman, bellhops or anything. Occasionally when people needed luggage carried we called on one of our working porters that were scrubbing floors or whatever they might be doing, to help whoever may be checking in, to take care of their luggage. But this was the nature of the operation.

Q. Did you rent those transient rooms by the day? A. Sometimes, but most of them were rented by the month and for long periods of time, six or seven or eight months or a year or two years, even, people would stay.

* * *

CROSS-EXAMINATION

BY MR. LAMENSDORF:

Q. Mrs. Hayes, at the time your deposition was taken [175] did you tell me at that time, in answer to the question how many hotel accommodations there are, that there were 70? A. At the time of the

deposition I don't remember; there were somewhere between 60 and 70 at the point of the accident. It was over 60 and I don't know whether it had reached 70 when we closed the building or at that time of the deposition there were 70 and we added one or two at a time.

MR. LAMENSDORF: I have no further questions, Your Honor.

* * *

[176] THE COURT: We will proceed with the case on trial. May I inquire whether you have succeeded in taking the deposition?

MR. CLARKE: Yes, we did, Your Honor. I understand that the reporter filed the deposition this morning.

THE COURT: Yes, it is here. The Clerk has just handed it to the Court.

MR. CLARKE: Will the Court read that deposition of Michael John Melville, Your Honor?

THE COURT: Are you offering it into the record?

MR. CLARKE: Yes, sir.

THE COURT: All of it?

MR. CLARKE: Yes, sir.

THE COURT: Very well.

MR. LAMENSDORF: If Your Honor please, I would also like for you to read the preface, my remarks at the beginning of the deposition.

THE COURT: You are offering them?

[177] MR. LAMENSDORF: Yes, sir.

THE COURT: Very well.

* * *

MR. CLARKE: With that deposition, the defendant rests.

* * *

[180] THE COURT: Do counsel care to argue the matter orally?

[181] OPINION OF THE COURT

THE COURT: As the Court stated in its remarks in passing on the

motion of the defendants to dismiss the complaint at the close of the plaintiff's case, the plaintiff in this action fell after he alighted from a taxicab and while he was proceeding towards the entrance of the hotel, and slipped on concrete which was at that time, sometime between midnight and one o'clock in the morning, covered with a sheet of ice resulting from a storm that had been in progress all day long since before daylight. There was a continuous concrete paving beginning with the public sidewalk and going back to a private areaway leading to the hotel entrance which was set back of the sidewalk. The concrete was continuous from the portion of the sidewalk nearest the curb to the front door of the hotel. There was no difference in level and no difference in appearance. Consequently, without a close inspection it may be difficult to determine exactly where the sidewalk ends and the private walkway begins.

The evidence is overwhelming to the effect that the plaintiff fell at a point which was on the borderline [182] between the public sidewalk and the private walkway approaching the hotel building. This appears from Plaintiff's Exhibit No. 1 and even from the testimony of a witness called by the defendant, who testified by deposition, namely, Michael John Melville, as well as by other evidence.

The Court has already held that as a matter of law the defendants would be liable for negligence irrespective of whether the fall occurred on the private walkway or on the borderline between the private walkway and the public sidewalk or even on the public sidewalk immediately in front of the hotel. The Court has discussed the authorities bearing upon this aspect of the matter and it would not reiterate that discussion. Suffice it to say that no reason has been shown that the Court deems sufficient for departing from the conclusions of law reached on that point previously. As the Court indicated, it has been held that where there is a defect in the sidewalk which lies in part on District property and in part on private property, both the District of Columbia and the owner of the private property may be held liable. The Court

also indicated that, in its opinion, the theory of the Pessagno case is as applicable to an accident happening on a public sidewalk across which a person had to step in order to reach a building, as a property owner [183] is liable in case of an accident occurring on a private walkway between the sidewalk and the building.

Finally, the defendants undertook to keep the sidewalk in good condition and, having undertaken to do so, they were under an obligation not to be guilty of any negligence.

We now come to the question of weather conditions at the time that the accident happened and preceding thereto. Naturally, the best evidence is to be found in the records of the Weather Bureau. Those records indicate that precipitation started on December 21st, 1962 some time prior to 7 o'clock in the morning and that this precipitation continued all day long until midnight and traces of precipitation resumed at 2 o'clock in the morning.

The police officer, who naturally is a disinterested witness and who by reason of his training and work is likely to be a trained observer and having a good memory for details, testified that at the time he inspected the premises shortly after the accident there was a mist, and further stated that it had snowed for quite some time.

The witness Kersey, an employee of the defendants, testified that at 11 o'clock in the evening everything was nice and clear. The Court is of the opinion that Mr. Kersey's recollection is inaccurate on this point, and it accepts the [184] other evidence to which reference has been made.

Accordingly, the Court finds that precipitation in one form or another continued without interruption until after midnight. After the snowfall stopped, the precipitation continued in the form of a freezing rain. There is no dispute over the fact and the Court finds that at the time the plaintiff fell the sidewalk in front of the hotel and the walkway between the sidewalk and the entrance were covered with a sheet of ice and were slippery. The evidence showed that from 7 o'clock in the morning until

9:45 in the evening employees of the hotel, under the direction of a very alert and efficient resident manager, continuously kept shoveling the snow from in front of the hotel, clearing both the sidewalk and the walkway without distinction. After they finished clearing the snow by shoveling it they scattered a chemical on the sidewalk and walkway, and then after a short rest they again resumed the work of shoveling. This process was continued and was carried on by different shifts of employees, but it ceased at 9:45 p.m. No more clearing was done after that time, and by the time that 12 or one o'clock arrived the following morning the area was covered with a sheet of ice.

The question of fact is was there a duty on the [185] part of the owner of the apartment hotel to continue some employee at work while the dangerous condition prevailed, even after the reasonable working hours of the day and evening. That is a question of fact rather than a question of law. Were this a jury trial the Court would leave the question to the jury. Naturally, the jury would decide it by its verdict, without giving its reasons. The Court, as a trier of the fact, however, deems it appropriate to state its reasons in some detail.

In determining the question whether there was any duty reasonably to continue the work that had been done all day long after that work ceased at 9:45 we have to consider, first, the character of the property. This property was an apartment hotel containing 317 apartments. In other words, there were 317 tenants in this apartment hotel, no doubt including families, and therefore perhaps there might have been anywhere between 500 and 1,000 people residing in it. Out of these 317 apartments, 60 or more were assigned for transient occupancy. Naturally, there is more going and coming on the part of transient occupants than on the part of permanent residents. The fact that there was no restaurant or cocktail lounge in the building does not seem to the Court to have any effect on the situation. There are many small [186] hotels that no longer have any dining rooms. Suppose, for example, a guest at the hotel

had been to the National Theater, which was a perfectly laudable and proper and natural thing to do. It would have been probably midnight before he could have returned to the hotel. He was as much entitled to safe ingress as a person who had come home from his employment at 5 o'clock in the afternoon.

As a matter of fact, it appears from the deposition of the witness Melville that there was an engineer on duty all night long and that it was a part of his function to participate in clearing the sidewalk if it was necessary. He did not do anything of the sort, so far as the evidence tends to indicate, on the night in question.

The Court is of the view that the situation would be entirely different if this storm had started during the night and the accident occurred early in the morning, before workmen could have reasonably been expected to start clearing the sidewalks and the areaway. Here, however, the storm had continued all day and into the evening, and the Court finds that it was negligent to stop the work that had been going on all day and evening and take no precautions for late arrivals. This is the factual distinction made by Judge Groner in the Pessagno case and the Simpson case, to which reference has [187] already been made.

The Court therefore finds that the defendants were guilty of negligence in the light of the circumstances that have been summarized, in failing to cause a continuation of the work of keeping the area clear after the hour of 9:45 p.m., and that this negligence was the proximate cause of the accident to the plaintiff.

There remains the question as to whether the plaintiff is guilty of contributory negligence. The Court, as a trier of the facts, finds as a fact that he was not. To be sure, a person is under a duty to take reasonable care for his own safety. When he alighted from the taxicab and until his feet touched the ground he did not realize that the surface of the street and areaway was icy. I do not believe that he was under any duty to look down on the street before he got out of the taxicab and ascertain the exact state of the condition of the street. It looked clear because there was no

snow piled up on it, and it was night and it is not always easy to detect or discern ice on a stony surface by artificial light, unless one bends down and examines it closely. Once he had put his feet on the ground and stood up, what was he to do? There is no evidence that he ran or otherwise was careless. He had to do his best to proceed [188] forward until he reached the entrance. There is no evidence that there was any other way to get around to the hotel.

Under the circumstances, the Court finds that it has not been established by a fair preponderance of the evidence that the plaintiff was guilty of any contributory negligence.

Accordingly, the Court rules that the plaintiff is entitled to recover and the trial will be resumed on the issue of damages.

DEPOSITION OF MICHAEL RARDEN

* * *

[3] EXAMINATION BY COUNSEL FOR PLAINTIFF

BY MR. LAMENSDORF:

* * *

[5] Q. Directing your attention to the evening of December 21, along about midnight or shortly after midnight, where were you at that time? A. I was down at the desk talking to Mike Melville who was the night clerk at that time.

Q. When you say "down at the desk," you mean the desk in the lobby of 1900 F Street, Northwest? A. That is correct.

Q. Were you familiar with the weather conditions in the District of Columbia during that evening, and I am referring to the evening of Friday, December 21st? A. Yes.

Q. What were the weather conditions? [6] A. Would you clarify the question? Do you mean at that particular time?

Q. I am referring to the course of the evening of Friday, Decem-

ber 21st. Had we had unusual weather that evening of any sort? A. It had snowed earlier in the day. At the time that I come out of the movie earlier that evening, I had noticed that it had apparently rained while I was in the movie and it put a light glaze over the snow which had fallen earlier. I noticed that the streets were very slick and upon walking towards the Park Central Apartments and eventually to the street in front of the Park Central, I noticed the street and sidewalks were also very slippery.

Q. Was it very cold at about that time? A. Yes.

Q. It was below freezing, substantially below freezing? A. To my best knowledge, I would say yes.

Q. Approximately what time was it that you got out of the movie to which you referred? A. It must have been around 10 or 10:30.

Q. Were you in the lobby at 1900 F Street some time about one, or shortly thereafter, on the morning of December 22nd? A. Yes, sir.

[7] Q. Did anything unusual happen?

MR. CLARKE: December 22nd, you say?

BY MR. LAMENSDORF:

Q. On the morning of December 22nd, between 12 and 1 a.m. A. In other words, in the first hour of December 22nd?

Q. Yes. A. Yes. Mike Melville received a call from Apartment 404. This apartment belonged to a Mr. Park, who had lived there many years. He had said that there was something —

Q. You didn't hear what he said, did you? A. No, I did not.

* * *

Q. When you went outside, did you go outside the front entrance of 1900 F Street? A. Yes, I did.

Q. What did you observe at that time? [8] A. I observed a person lying on the ground, and Mike Melville at that time was just getting to him. As I came out the door, there was also another gentleman standing right next to him.

Q. When you said he was on the ground, do you mean he was on the earth or was he on the sidewalk or walkway? A. He was, to my best knowledge, right on the corner of the sidewalk and the entrance into the Park Central Apartments.

Q. In other words, he was on the corner of a junction — A. Yes.

Q. — between what would be the walkway into 1900 F. Street and the public sidewalk that went parallel to the building? A. That is correct.

Q. The sidewalk to which you are referring, would that be on the south side of F Street? A. I don't know the direction right offhand.

MR. LAMENSDORF: For the purpose of clarification, can we stipulate, Mr. Clarke, that 1900 F Street faces north and is located on the south side of F Street?

MR. CLARKE: Yes.

BY MR. LAMENSDORF:

Q. For the purpose of clarification, as far as you are concerned, Mr. Rarden, when you walked out of 1900 F Street, you [9] would be walking in the direction of Pennsylvania Avenue at that time? A. That is correct.

MR. LAMENSDORF: Would you please mark this Plaintiff's Exhibit No. 1 for identification. This purports to be a diagram of a sidewalk and a walkway.

(A diagram was marked Plaintiff's Exhibit No. 1 for identification and was retained.)

BY MR. LAMENSDORF:

Q. Mr. Rarden, I show you here what has been marked by the shorthand reporter as Plaintiff's Exhibit No. 1 for identification and ask you if that, according to your best recollection, represents the sidewalk and the walkway in front of the Park Central Apartment Hotel? A. It does.

MR. LAMENSDORF: Mr. Clarke, would you like to look at this?

BY MR. LAMENSDORF:

Q. You testified that you saw a man at the junction of the walkway and the sidewalk. Could you point to that location where you saw that man lying? A. He was approximately right here (indicating).

Q. Would you mark that with an X in red?

(The witness complied.)

[10] MR. CLARKE: Do you have another copy of that?

MR. LAMENSDORF: No, but I will afterwards, for your benefit, get it Xeroxed. All right?

MR. CLARKE: Thank you.

BY MR. LAMENSDORF:

Q. Would you put a circle around your X? If you will, enclose it.

(The witness complied.)

BY MR. LAMENSDORF:

Q. Did you later learn the name of that man who was there? A. I knew him at that time.

Q. Who was that? A. His name was Mr. Robinson.

Q. Is that Stanley Robinson? A. As far as I know. I merely know his last name.

Q. Going back to what you observed there, in what condition did you observe Mr. Robinson? A. Well, he seemed to be lying on his side. He seemed very aware of what had happened. He said, "I have broken my ankle."

Q. What happened immediately after that? A. At that time, Mr. Mike Melville and I picked him up to take him inside the building.

[11] Q. How did you carry him into the building? A. We took one of his arms over each of ours — Well, I took one arm and Mr. Melville took the other arm and we lifted him and carried him in. His feet were off the ground.

* * *

[12] Q. What was the condition of the walkway and sidewalk where you found Mr. Robinson at that time? A. Very slick.

Q. Could you describe that very slick condition in further detail?

A. The sidewalk was covered with glazed ice.

Q. Did you see any sand at all on the sidewalk or the walkway at that location? A. There was none above the glazed ice.

Q. Did you see any sand on the walkway when you came out of 1900 F Street to where you found Mr. Robinson? A. At that time, no.

Q. You say there was none above the ice. Did you see any [13] anywhere? A. To my best knowledge, I did not observe any.

Q. You did not observe anything anywhere? A. That is correct.

Q. When you and Mr. Melville took Mr. Robinson into the lobby, what happened thereafter? A. We sat him on the chair directly in front of the door. Mike Melville — first, I asked him to get a towel because he was bleeding. Mike Melville also —

Q. What part of his body was bleeding? A. His leg or his ankle. At that time, he also called an ambulance when he went back to the switchboard and he brought a towel back. In the meantime, I had taken off his shoe and was trying to hold the leg in a straight position, the lower part of his leg, his ankle and foot.

Q. Was Mr. Robinson aware of what you were doing at the time? A. Yes.

Q. Was he in control of his faculties? A. Yes.

Q. As far as you could observe, could you tell us anything about Mr. Robinson's sobriety at the time? A. To my best knowledge, he was sober. I couldn't smell [14] anything on his breath.

Q. Did you tell us what you did with the towel when you got it? A. Yes. I applied it underneath his leg or underneath his ankle and the bleeding stopped. Well, it slowed down.

Q. Did you remain with Mr. Robinson until the ambulance arrived? A. I did.

* * *

[15] Q. At that time, you knew the resident manager, Mrs. Hayes, did you not? A. I did, very well.

Q. Was she in the lobby while Mr. Robinson was there? A. No.

Q. After the ambulance took Mr. Robinson away, did Mrs. Hayes show up in the lobby? A. She did.

[16] Q. Did you and Mrs. Hayes go out in front of the entrance and examine the place where Mr. Robinson fell? A. We did.

Q. Did you make any comment to Mrs. Hayes at that time in regard to the sidewalks? A. Yes.

Q. What did you say? A. I told her that I thought that the sidewalks were very slick and were glazed ice and I offered — oh, I asked her if she had any salt to put on the ice. She said, "No." I said, "Do you have any sand?" She said, "Yes, there is some around in the back garage."

[18] Q. Mr. Rarden, what is your address in Idaho, your home address? A. 344 First Street, Idaho Falls, Idaho.

Q. Did you obtain an extension of time in regard to your entry into the service pending the completion of your law school training? A. I have filled in three extensions of time from graduation from Idaho State University.

Q. Do you expect to be called into the service shortly after you complete your law school degree? A. As soon as I finish in February, I have to contact them concerning my changed status and I am subject to call on 30 days' notice.

Q. Are you single at the present time? A. Yes, I am.

* * *

EXAMINATION BY COUNSEL FOR DEFENDANTS

BY MR. CLARKE:

Q. Mr. Rarden, when did it snow on the day of this accident?

MR. LAMENSDORF: Are you referring to the Friday?

MR. CLARKE: I am referring to when he went to the movies, that day.

[19] THE WITNESS: It had snowed earlier in the day. When I went to the movie, I do not recollect it snowing at that particular time.

BY MR. CLARKE:

Q. What time did you go to the movies? A. I would say possibly 7 or 7:30.

Q. Before going to the movies, what had you done? A. I had studied.

Q. Had you been to school that day? A. Friday the 21st, yes.

Q. What time did you get out of school? A. I get out — I got out around noon or 1 o'clock and then I went from there to work.

Q. When you got out of school at 1 o'clock, had it snowed at that time? A. I seem to remember it snowed in the afternoon. I am not positive at that particular time.

Q. Then you went to the Congressman's office to work for the afternoon? A. That is correct.

Q. Then did you come back to the apartment after working at the Congressman's office? A. That is correct.

[20] Q. Had it snowed while you were in the Congressman's office? A. To my — well, as far as I can remember, it had snowed that afternoon.

Q. Had it finished snowing when you left the Congressman's office to go to your apartment? A. It seems to me that it was snowing when I did come home, yes, and it was not snowing when I went out later on.

Q. When you came home from the Congressman's office, about what time was it? A. Oh, I normally got off work about between 5 and 6.

Q. Was it snowing at that time when you came into the apartment? A. I cannot remember exactly.

Q. Did you notice anyone working on the sidewalks when you came in the apartment? A. At that particular time, I did not see anyone on the sidewalk itself.

Q. I am talking about the sidewalk in front of the Park Central Apartments. A. Well, at some time that evening, somebody had cleared the sidewalk because I remember that it was clear. The walkway out of the Park Central Apartments was clear and dry at that time.

[21] What time was this, sir? A. It was between either the time I got home or when I left for the movie.

Q. You say you got home between 5 and 6. What time did you leave for the movie? A. Between 7 and 7:30.

Q. When you were going into the apartment after you had come from your job, did you have any difficulty or was there anything unusual about the sidewalk in front of the Park Central? A. At that time, no.

Q. I assume you left this apartment in the morning and went to your classes and went right on to the Congressman's office? A. That's correct.

Q. You didn't come back from your classes to the apartment in the middle of the day, did you? A. There were days that I did, but, as far as I can remember, that day I didn't.

Q. Do you recall specifically what the condition of the sidewalk was like between 5 and 6 when you came home from your job to go to your apartment? A. The sidewalk or the walkway?

Q. The sidewalk and the walkway into the apartment, both [22] of them. A. This is a point that is not clear in my mind, as to exactly which time the sidewalk was cleared. I mean it was clear when I came out of the apartment. Somebody had worked on it. I cannot remember the exact time.

Q. That was 7 or 7:30? A. Right.

Q. At that time, was all of the snow cleared from the walkway, that is, the entranceway from the apartment to the public sidewalk, and

on the public sidewalk? A. Straight in front of the — you are referring to straight in front of the door?

Q. The entrance to the apartment. A. Yes.

Q. Was the sidewalk clear down to the corner of 19th and F? A. No. There was a single lane. Well, there was a single lane that had either been tramped down to the sidewalk or someone had gone down with a shovel down to the corner. It was very narrow.

Q. This entranceway from the front of the apartment right straight out to the street was entirely clear of snow at 7 or 7:30 when you left to go to the movies? [23] A. As far as I can remember, yes.

Q. I think you made the further statement that it was dry. A. As far as I can remember, yes.

Q. There were no patches of snow or anything like that in that area at that time, was there? A. In front of the building on the walkway no.

Q. In fact, you didn't see any snow in front of the building at that time, did you? A. On the walkway.

Q. On the walkway. A. As far as I can remember, no.

Q. When you came back from the movie, did you walk on the south side of 19th Street? A. I came across the street from the corner where American University is located and diagonally came across the street and I came across on to the — in fact, I went over slish, through some snow onto the sidewalk and then onto the walkway in front.

Q. About what time was this? A. Between 10 and 10:30.

Q. What was the condition of the walkway at that time directly in front of the apartment? A. Well, it was very slick and I nearly fell down.

[24] Q. Did you tell anyone about it at that time? A. I just came in the door and I normally went up to the desk. I knew the people who worked there and I commented, but that was all.

Q. On this particular occasion, did you make any complaint about

the walkway when you came in at 10 or 10:30 that night? A. As far as I can remember, I didn't.

Q. This walkway then had changed between 7 and 7:30 when you went to the movies and 10 or 10:30 when you came back from the movies? A. Apparently.

* * *

[30] Q. When you walked back from the movie, you knew that the [31] streets had been glazed over, did you not? A. Yes. The slush and water that I had seen earlier, especially on Pennsylvania Avenue, was glazed and cars were having trouble driving and I did walk on the sidewalk and I don't remember them being shoveled off.

Q. At any time, did you have to walk in the streets to keep your balance? A. I think I just walked straight up the sidewalk.

* * *

Q. Did you have any difficulty walking over the unshoveled sidewalk area? [32] A. No, not really.

* * *

[34] Q. Was there sufficient light in front of this building so you could see where you were going and see the ice which was on the sidewalk? A. That made it obvious that it looked glazed.

Q. Because there was sufficient lighting? A. Yes.

* * *

[35] Q. What kind of shoes did Mr. Robinson have on? A. He had a pair of low shoes on with rubbers.

Q. Over the top of the shoes? A. Yes.

Q. Did you ever get down to look to see if there was any sand imbedded underneath the ice? A. No. I didn't get down right next to the ground, no.

Q. I ask you that question because Mrs. Hayes had indicated that the area had been sanded before and you testified that you didn't see any sand there. I wondered if you looked to see if there was any under. A. I didn't get down to make a minute inspection, no.

Q. You didn't feel any on top of the ice? A. No, there was none on top of the ice, as I just said. As far as walking on it and by looking at my height, it was obvious that there was no sand on it.

Q. How tall are you? A. 5' 10", and when I bent to pick him.

* * *

[37] FURTHER EXAMINATION BY COUNSEL FOR PLAINTIFF

BY MR. LAMENSDORF:

Q. Mr. Rarden, just a couple of questions. I take it, based upon what you have told Mr. Clarke, that you thought the unshoveled side-walks were not as slippery as the shoveled portion [38] during this period of time just shortly before Mr. Robinson fell; is that right?

* * *

DEPOSITION OF
MICHAEL JOHN MELVILLE

* * *

[3] DIRECT EXAMINATION

BY MR. CLARKE:

Q. Give us your full name, please, sir. A. Michael John Melville.

Q. Where do you live? A. I live at 922 Main Street, Bentleyville, Pennsylvania.

Q. How far is that from the Pittsburgh Airport? A. About 50 miles.

Q. Mr. Melville, we had expected you in Washington to [4] testify in this case. Will you tell the Court why you didn't come? A. Well, there is a pressing obligation at home. My wife is past due to deliver. She has been under the doctor's care and I couldn't see that I could leave her at that time with the situation as it was.

Q. We have, by agreement, come and met you here to take your

deposition to be read tomorrow morning in court. Do you understand that? A. That's correct.

Q. Mr. Melville, back on December 21st and the morning of December 22, 1962, were you employed at the Park Central? A. I was.

Q. What was the nature of your employment? A. I was night manager. I handled the switchboard, the billing for the hotel, the mail, all sorts of business routines which occurred during that period of time.

Q. What were your hours of employment? A. From 11 to 7 in the morning.

Q. In other words, you were the night man on the desk? A. Night man, yes.

Q. About 1 o'clock in the morning, did something unusual happen? [5] A. Yes. A man, one of the tenants in the building, came down and told me —

MR. LAMENSDORF: I object to what he told you if you are going to repeat the conversation.

THE WITNESS: I was informed then by a tenant that a man had fallen outside.

MR. LAMENSDORF: I object to what he told you.

BY MR. CLARKE:

Q. Mr. Melville, did someone come down to the desk or did they call down? A. They came down and I was informed —

Q. That is all I asked you, if they came down. After they came down, what did you do? A. I followed the report of an accident out front in which an individual slipped and had fallen.

Q. What did you do? A. I went out with Mr. Rarden and brought him in the lobby.

Q. Is Mr. Rarden a friend of yours? A. He is.

Q. Do you know where he is now? A. He is in the service. He was in ROTC. He graduated from law school and went into the Army on active duty. Where he is stationed, I have no idea.

[6] Q. You and Mr. Rarden went out front to see what had happened?

A. That's correct.

Q. What did you observe when you went out front of the Park Central Apartments? A. We saw a man sitting up on the sidewalk and he attempted to get up and he couldn't make it. We helped him into the lobby.

Q. What was that man's name? A. I couldn't tell you right off-hand.

Q. Was he a tenant in the building? A. He was a tenant in the building.

Q. Can you tell us where he was sitting up when you first saw him? A. At the intersection of the public and the private walk going into the main entrance of the building.

Q. What side as you go in the building? A. On the right-hand side facing the front door.

Q. At that time, what was the condition of the weather? A. It was cold, below freezing, and there was rain falling and, consequently, rather icy.

Q. What time did you come to work that night? A. 11 o'clock.

Q. Where did you live at that time? [7] A. I lived in Alexandria, Virginia.

Q. Did you have to come in the building yourself at 11 or close to 11 o'clock that night? A. I did.

Q. Which entranceway did you use? A. I used the main entrance.

Q. When you came in at 11 o'clock, what was the condition of the entranceway? A. Well, it had been cleaned and sanded prior to my coming there and it wasn't too bad.

Q. Was there evidence of sand on the sidewalk area when you came in at 11 o'clock? A. Yes, there was. One thing. I mentioned Alexandria. It was Arlington that I lived at that time.

Q. You want to change that? A. Yes, you better change that.

MR. CLARKE: Is it all right to change it from Alexandria to Arlington?

MR. LAMENSDORF: Take it on the record as he has given it to you.

THE WITNESS: To keep it accurate.

BY MR. CLARKE:

Q. Did you have any laborers or porters or anything of [8] that nature on at the time you came on at 11 o'clock or had they all gone? A. They have a porter on until about the time I come on and then he leaves. Either when I get there or shortly before. Then the engineer takes over the night duties of the porter or whatever else may be required. They had a combination apartment house and hotel. If somebody came in as a hotel guest, the engineer would take care of the baggage, and so forth, instead of the porter. He usually was the man in charge of that phase of the operation.

MR. CLARKE: I have no further questions.

CROSS-EXAMINATION

BY MR. LAMENSDORF:

Q. Mr. Melville, you mean that the engineer who was there, if it was necessary, would take the bags up of a hotel guest who would check in after 11 at night? A. That's right. He lived right on the premises.

Q. If any cleaning outside on the sidewalk or the entranceway was required, he would take care of that then? A. That's correct.

Q. Was that engineer there that night? A. He was. I don't remember at any time during my employment that they did not have somebody on duty for maintenance at [9] any time of the day or night. They always had somebody around.

Q. They always had somebody available to do whatever was necessary — A. That's correct.

Q. — either inside or outside of the apartment-hotel? A. That's correct.

Q. Who was that someone who came down to report the accident that a man had fallen? What was his name? A. Mr. Pach.

Q. P-a-c-h? A. P-a-c-h. He lived on the fourth floor. I can't give you the apartment number.

Q. He came into the lobby to report that to you? A. That's right. He is one of the long-time residents of the building.

Q. You said it had been sanded prior to your coming? A. That is true.

Q. Did you see it sanded? A. I saw evidence of the sand. I did not see a man sanding it.

Q. You saw evidence of the sand. Where did you see the evidence of the sand? A. Well, from the corner of 19th and F all the way down [10] past the main entrance and in the entranceway going into the building, the entire sidewalk in front of the building had been shoveled and sanded.

Q. Shoveled and sanded? A. Shoveled and sanded.

Q. You say there was sand not only on the entranceway but also on the public sidewalk? A. On the public sidewalk.

Q. This was at 11 p.m. when you came in? A. That's correct.

Q. Do you know who sanded that? A. I would assume —

MR. CLARKE: No.

BY MR. LAMENSDORF:

Q. Do you know who sanded it?

MR. CLARKE: Do you know who sanded it?

THE WITNESS: No, I don't know to my knowledge.

BY MR. LAMENSDORF:

Q. Wasn't John Kersey the porter on duty at 11 p.m. when you came in that night? A. That's right.

Q. Was he the only porter on duty that evening? A. I have no way of knowing. They generally have one at [11] night, but I couldn't be sure.

Q. The usual rule is to have only one porter on duty during those hours of the evening? A. Him, plus the engineer.

Q. As long as a porter was working, the engineer did not participate in the porter's duties, did he? A. Unless necessary. They didn't have any strict segregated lines of duty. They had one man in charge more or less. The engineer was supervisor and the porter was not, but when the occasion arose that they needed the help of both of them, they both pitched in. There was no argument on that point. Generally, they got along well with just the porter.

Q. You lifted Mr. Robinson up and carried him into the lobby along with Mr. Rarden? A. We assisted him in the lobby.

Q. You smelled no odor of alcohol whatsoever on his breath, did you? A. No, I did not.

Q. No, you did not smell any odor? A. I did not smell any odor of alcohol. I could detect no odor of alcohol. I didn't make an effort to see or ask any questions as to whether or not he had been drinking. Under the circumstances —

[12] Q. That is all. There is no other question pending. At the time you came out to assist Mr. Robinson in, the areaway and the public sidewalk were a sheet of ice at that time, were they not? A. It was icy, yes.

MR. LAMENSDORF: I have no further questions.

MR. CLARKE: I have no further questions.

(By stipulation of counsel, with the consent of the witness,
reading and signature waived.)

[Certificate of Notary Public]

JUDGMENT

This cause of action came on for trial before the Court, without a jury, and the Court having heard the evidence and argument of counsel and a decision having been duly rendered by the Court including Findings of Fact and Conclusions of Law, it is by the Court this 23rd day of December, 1965

ORDERED AND ADJUDGED

That Judgment be entered herein in favor of the plaintiff against the defendants in the sum of \$15,409.14 plus costs.

/s/ ALEXANDER HOLTZOFF

Judge

Seen:

/s/ William H. Clarke
Attorney for defendants

NOTICE OF APPEAL

Notice is hereby given this 12th day of January, 1966, that PARK CENTRAL APARTMENTS, INC., a corporation, and RANDALL H. HAGNER AND CO., a corporation, the defendants herein, hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 23rd day of December, 1965 in favor of STANLEY ROBINSON against said defendants, PARK CENTRAL APARTMENTS, INC. and RANDALL H. HAGNER and CO.

/s/ WILLIAM H. CLARKE

Attorney for Defendants

[Certificate of Service, dated January 12, 1966]

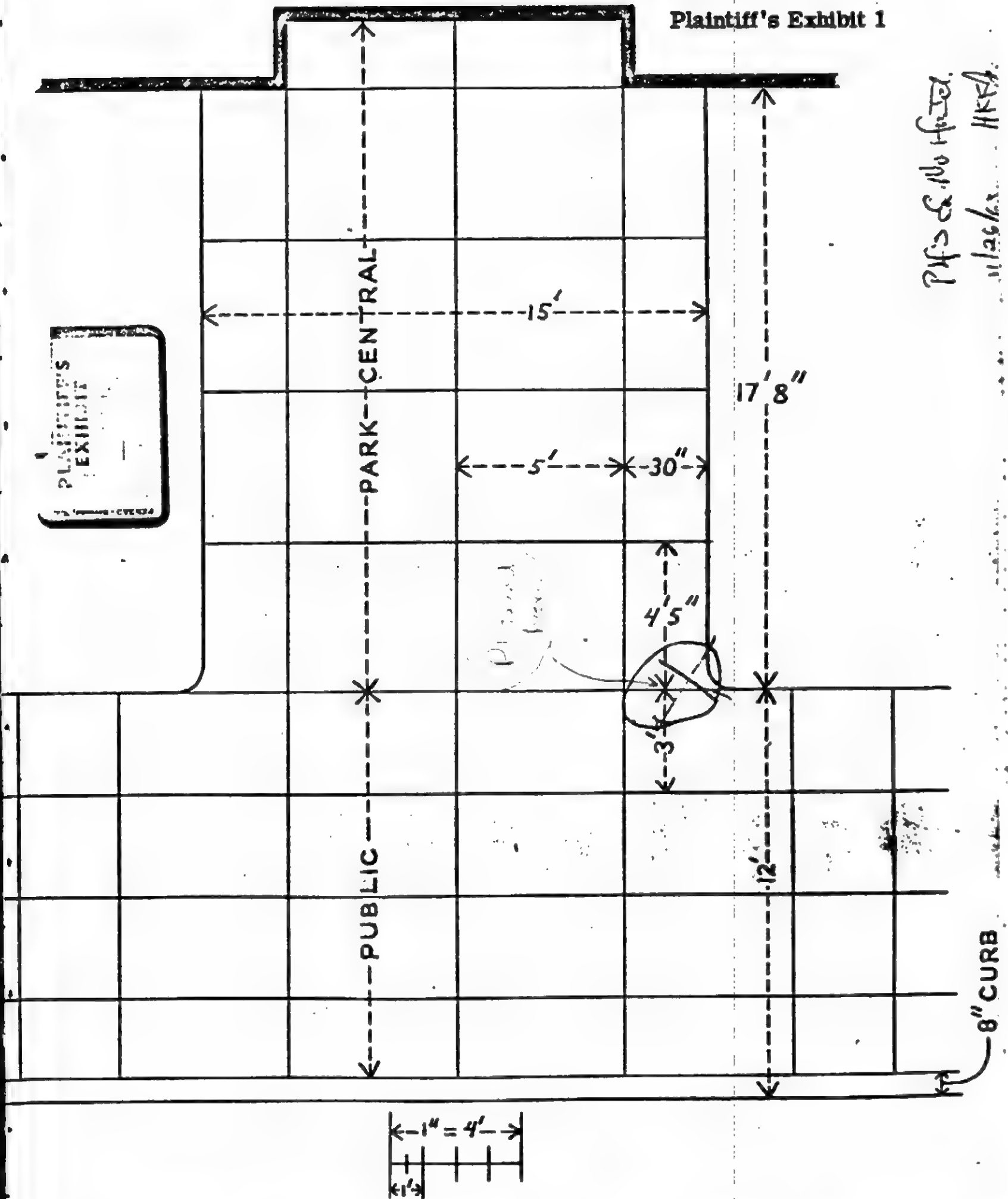
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Plaintiff's Exhibit 1

PHS & No Heter.
11/26/62 HKH

PLAINTIFF'S
EXHIBIT



U. S. DEPARTMENT OF COMMERCE WEATHER

Plaintiff's Exhibit 2 LOCAL CLIMATOLOGICAL DATA

WASHINGTON, D. C.
NATIONAL AIRPORT
DECEMBER 1962

36° 31' N.		Longitude 77° 02' W.		Elevation (ground) 14 ft.		Eastern Standard time used																			
Temperature (°F)				Precipitation		Snow, Sleet, or Ice on ground at 7:00 AM		Wind		Sunshine		Sky cover		Thunderstorm or distant lightning	Weather restricting visibility to 1/2 mile or less	Solar radiation (Langley) starting, Virginia	River Stage feet Letter Case 0700 EST			Date					
1	2	3	4	5	6	7	8	9	10	11	12	13	14								15	16	17	18	19
Maximum	Minimum	Average	Departure from normal	Degree days (base 65°)	Total (Water equivalent) (in.)	Snow, Sleet (in.)			Prevailing direction	Average speed (m. p. h.)	Fastest mile	Direction	Total (hours and minutes)	Percent of possible	Sunrise to sunset (tenths)	Midnight to midnight (tenths)									
64	36	47	+3	18	0	0	0	0	N	5.3	13	N	9:40	100	0	0			280.0	3.6					1
62	33	46	+7	17	0	0	0	0	N	6.6	13	N	9:31	99	0	0			259.1	3.6					2
56	36	46	+5	19	0	0	0	0	N	5.8	13	N	8:46	91	1	1			256.8	3.5					3
37	37	44	+6	19	0	0	0	0	N	8.4	12	N	2:24	25	10	8			154.9	3.5					4
35	35	49	+9	16	0	0	0	0	N	6.3	14	N	8:54	93	8	7			236.3	3.4					5
46	34	40	+2	23	0	0	0	0	N	14.4	26	N	0	0	10	9			60.6	3.3					6
46	36	40	+2	23	0	0	0	0	N	14.0	26	N	0:34	5	9	9			106.9	N					7
46	36	40	+2	23	0	0	0	0	N	14.0	26	N	6:39	70	2	3			155.9	3.3					8
46	36	40	+2	23	0	0	0	0	N	9.6	23	N	0	0	10	8			157.7	3.3					9
46	36	40	+2	23	0	0	0	0	N	10.7	18	N	3:44	60	1	2			128.6	3.6					10
46	36	40	+2	23	0	0	0	0	N	6.3	23	N	0:33	6	9	6			270.2	3.1					11
46	36	40	+2	23	0	0	0	0	N	14.2	23	N	9:30	100	0	0			262.6	3.3					12
46	36	40	+2	23	0	0	0	0	N	11.5	21	N	8:58	95	2	4			261.5	3.3					13
46	36	40	+2	23	0	0	0	0	N	10.9	26	N	8:06	84	3	5			261.5	3.3					14
46	36	40	+2	23	0	0	0	0	N	6.3	16	N	1:20	14	10	8			261.5	3.3					15
46	36	40	+2	23	0	0	0	0	N	6.2	13	N	2:22	23	9			261.5	3.3					16	
46	36	40	+2	23	0	0	0	0	N	5.8	15	N	5:43	60	3			261.5	3.3					17	
46	36	40	+2	23	0	0	0	0	N	5.8	13	N	7:03	75	2	2			261.5	3.4					18
46	36	40	+2	23	0	0	0	0	N	4.0	12	N	2:43	29	10	8			261.5	3.4					19
46	36	40	+2	23	0	0	0	0	N	12.2	30	N	0:47	8	10	10			261.5	3.3					20
46	36	40	+2	23	0	0	0	0	N	9.9	18	N	0	0	10	10			261.5	3.2					21
46	36	40	+2	23	0	0	0	0	N	6.0	14	N	3:53	41	8	7			177.0	3.6					22
46	36	40	+2	23	0	0	0	0	N	7.4	23	N	4:30	48	6	5			234.7	3.3					23
46	36	40	+2	23	0	0	0	0	N	10.6	17	N	9:16	98	10	7			227.1	3.2					24
46	36	40	+2	23	0	0	0	0	N	6.0	11	N	0	0	10	10			39.7	3.7					25
46	36	40	+2	23	0	0	0	0	N	6.3	13	N	4:17	45	10	9			215.7	3.7					26
46	36	40	+2	23	0	0	0	0	N	5.3	12	N	0:33	6	10	9			29.2	3.4					27
46	36	40	+2	23	0	0	0	0	N	4.5	12	N	9:28	100	0	0			258.9	3.4					28
46	36	40	+2	23	0	0	0	0	N	5.3	19	N	0	0	10	9			38.0	N					29
46	36	40	+2	23	0	0	0	0	N	19.7	29	N	9:29	100	0	0			293.5	N					30
46	36	40	+2	23	0	0	0	0	N	22.0	34	N	9:29	100	0	0			302.6	N					31
Sum					2.33	16.2				274.6			150:12	165	171										Sub
Avg.										8.9	Fastest	Dir.	Possible	%	6.0	3.2									Avg.

T in column 2, 4, 6 and in the Monthly Precipitation table indicates an amount too small to measure.

TEMPERATURE (°F)
 Average monthly 47.3
 Departure from normal -4.9
 Highest 64 on 1
 Lowest 31 on 31
 Number of days with -
 Max. 32° or below 7
 Max. 90° or above 0
 Min. 32° or below 25
 Min. 0° or below 0

HEATING DEGREE DAYS (base 65°):
 Total this month 981
 Departure from normal -41.7
 Seasonal total (since July 1) 1821
 Seasonal departure from normal +218

BAROMETRIC PRESSURE (in.)
 Avg. station (elev. 112 feet, m. s. l.) 29.952
 Highest sea level 30.48 on 26
 Lowest sea level 29.13 on 6

PRECIPITATION (in.)
 Total for the month 3.33
 Departure from normal +0.33
 Greatest in 24 hours 1.09 on 29
 Snow, Sleet -
 Total for the month 16.2
 Greatest in 24 hours 5.4 on 25
 Greatest depth on ground 7 on 25, 26
 Dates of - Hail 0
 Sleet 21, 25, 29 Glass / time 21, 22, 23, and 25

Symbols used in columns 18-19
 A - Mist
 B - Drizzle
 C - Snowing over
 D - Distant lightning
 E - Rain
 F - Fog
 G - Thunderstorm
 H - Freezing drizzle
 I - Freezing rain
 J - Ice
 K - Smoke
 L - Dust
 M - Sand
 N - Sea
 O - Snow
 P - Thunderstorm
 Q - Freezing drizzle
 R - Freezing rain

*When this exceeds the limit from the present station elevation this total was selected to permit comparison of data for a longer period of better general record.

1/ Last of several occurrences. No excessive precipitation for the month.
 Greatest rainfall of record (since 1888) for December.

As custodian of official Weather Bureau records on file at the Weather Bureau Airport Station, Washington National Airport, Washington, D.C., I hereby certify that this is a true and correct copy of observations

HOURLY PRECIPITATION (in.)

Date	A. M. Hour ending at												P. M. Hour ending at												Date
	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11	12	
1																									1
2																									2
3																									3
4																									4
5																									5
6																									6
7																									7
8																									8
9																									9
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28																									28
29																									29
30																									30
31																									31

Known errors found in this issue will be published in later issues.
 Subscription Price Monthly Local Climatological Data \$1.00 per year including annual Summary if published; \$1.00 per year for monthly Supplement only; \$1.50 per year for monthly Summary, monthly Supplement and annual Summary if published. Single copy price: 10 cents for monthly Summary; 10 cents for monthly Supplement; 15 cents for annual Summary.

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DEPARTMENT OF COMMERCE, WEATHER BUREAU

LOCAL CLIMATOLOGICAL DATA

WASHINGTON, D.C.
(WAS. DULLES INTERNATIONAL AIRPORT)
CHANTILLY, VA.
DECEMBER 1962

Latitude 38° 57' N. Longitude 77° 27' W. Elevation (ground) 291 ft. Eastern Standard time used

Date	Temperature (°F)			Precipitation (in.)	Snow, Sleet (in.)	Snow, Sleet or Ice on ground at 7:00 AM (in.)	Prevailing direction	Wind		Sunshine Total (hours and minutes)	Sky cover Percent of possible Sunrise to sunset (tenths)	Midnight to midnight (tenths)	Thunderstorm or distant lightning	Weather restricting visibility to 1/2 mile or less						Date
	Maximum	Minimum	Average					Speed (m. p. h.)	Direction											
1	61	28	44	0	0	0	NW	6.8			0	0								1
2	59	30	45	0	0	0	N	7.9			0	0								2
3	56	28	42	0	0	0	N	5.8			0	0								3
4	52	31	42	0	0	0	NW	8.4			0	0								4
5	57	32	45	0	0	0	NW	7.7			0	0								5
6	45	32	39	0	0	0	NW	16.2			0	0								6
7	42	32	37	0	0	0	SW	14.0			0	0								7
8	43	26	35	0	0	0	S	6.9			0	0								8
9	35	25	30	0	0	0	NW	10.1			0	0								9
10	32	16	24	0	0	0	N	11.8			0	0								10
11	28	14	21	0	0.5	0	WSW	8.9			0	0								11
12	23	11	17	0	0	0	NW	14.8			0	0								12
13	23	12	19	0	0	0	WNW	12.4			0	0								13
14	31	15	23	0	0	0	WNW	13.9			0	0								14
15	32	10	21	0	0	0	S	8.6			0	0								15
16	39	30	35	0	0	0	NW	10.2			0	0								16
17	45	27	36	0	0	0	S	7.6			0	0								17
18	46	22	34	0	0	0	SSW	5.7			0	0								18
19	39	25	32	0	0	0	SSW	5.7			0	0								19
20	45	29	37	0	0	0	NW	13.3			0	0								20
21	50	20	35	0	5.8	1	NW	10.2			0	0								21
22	41	25	33	0	0.3	4	NW	8.2			0	0								22
23	45	14	30	0	0	0	WNW	8.6			0	0								23
24	32	17	25	0	0	0	NW	8.6			0	0								24
25	27	23	25	0	4.4	5	NW	11.1			0	0								25
26	41	23	32	0	0	0	NW	8.9			0	0								26
27	36	22	29	0	0	0	N	4.9			0	0								27
28	37	12	25	0	0	0	N	5.1			0	0								28
29	34	12	24	0	1.3	6	S	8.3			0	0								29
30	35	13	24	0	0	0	NW	20.5			0	0								30
31	30	11	16	0	0	0	NW	26.2			0	0								31
Sum	1215	667			14.3			107.0			182	163								
Avg	38.2	21.5						10.0			6	5								

T in column 7, 8, 9 and in the Hourly Precipitation table indicates an amount too small to measure.

TEMPERATURE: (°F)
 Average monthly 30.4
 Departure from normal -
 Highest 61 on 1
 Lowest 10 on 15
 Number of days with -
 Max. 32° or below 10
 Max. 90° or above 0
 Min. 32° or below 31
 Min. 0° or below 0

HEATING DEGREE DAYS (base 65°):
 Total this month 1069
 Departure from normal -
 Seasonal total (since July 1) -
 Seasonal departure from normal -

BAROMETRIC PRESSURE (in.)
 Avg. station (elev. - feet m. s. l.)
 Highest sea level 31.03 on 24
 Lowest sea level 29.52 on 6

NOTE: No reissue available for precipitation measurements. "N" in Column 7 indicates missing data.

PRECIPITATION: (in.)
 Total for the month -
 Departure from normal -
 Greatest in 24 hours - on -
 Snow, Sleet -
 Total for the month 14.3
 Greatest in 24 hours 6.1 on 21, 22
 Greatest depth on ground 8 on 30, 31
 Dates of - Hail
 Sleet 21, 22, 23, 29; Ice 21, 22, 23, 29

Symbols used in columns 18-19

4 - Hail
 10 - Snowing over
 20 - Distant lightning
 30 - Sun
 40 - Partly
 50 - Cloudy
 60 - Fog
 70 - Rain
 80 - Thunderstorm
 90 - Precipitating
 100 - Clear

When the elevation differs from the ground elevation the level was selected to permit comparison of data for a longer period of time.

HOURLY PRECIPITATION (in.)

Date	A. M. Hour ending at												P. M. Hour ending at												Date
	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11	12	
1																									1
2																									2
3																									3
4																									4
5																									5
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28																									28
29																									29
30																									30
31																									31

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UNITED STATES OF AMERICA

Plaintiff's Exhibit 3

UNITED STATES DEPARTMENT OF COMMERCE

WEATHER BUREAU

FILED

MAR 31 1966

ROBERT M. STEWART, CLERK

District Meteorological Office

Station Washington National Airport

Date February 4, 1963

I hereby certify that the attached is an official true copy of a United States Weather Bureau record: WBAN 10 A, Surface Weather Observations, for Washington, D. C., for December 21, 1962. (Copyflex copies)

for R. C. Schmidt,

Meteorologist in Charge.

I hereby certify that each publication listed below is an official publication of the United States Weather Bureau

Attached is TA-631-0-1 explaining the symbols used in the above reports.

USCOMM-WB-DC

for R. C. Schmidt,

Meteorologist in Charge.

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~~DEC-2-1-1962~~

1	1850	15				8	05-1850		
2	M705	15				10	05-1850		
3	405	15	75022	35	0071K	01103	131		
4	M705	15				10	05-1850		
5	M555	15				9	05-1850		
6	M555	15				12	05-1850		
7	M403	15				11	05-1850		
8	M359	15	S--	355	27	3	05-1850	007	15XX
9	M206	4	S-			10	05-1850		
10	W12X	2	S-	354	25	10	05-1850		
11	W12X	2	S-			7	05-1850		
12	W12X	2	S-			5	05-1850		
13	W12X	2	S-			5	05-1850		
14	M335	4	S-	354	24	10	05-1850		
15	W12X	2	S-			5	05-1850		
16	W12X	2	S-			6	05-1850		
17	E255	4	S-	355	24	10	05-1850		
18	405	15	80806	56711	35324	0521X	1000 70147	50001	4420
19	W12X	2	S-			2	05-1850		
20	W12X	2	S-			2	05-1850		
21	W7X	1	S-			11	05-1850		
22	W7X	1	S-			11	05-1850		
23	W7X	1	S-			7	05-1850		
24	W7X	1	S-			9	05-1850		
25	W7X	1	S-			8	05-1850		
26	W7X	1	S-			10	05-1850		
27	W7X	1	S-			9	05-1850		
28	W7X	1	S-			2	05-1850		
29	W7X	1	S-			11	05-1850		
30	W7X	1	S-			10	05-1850		
31	W7X	1	S-			10	05-1850		
32	W7X	1	S-			10	05-1850		
33	W7X	1	S-			10	05-1850		
34	W7X	1	S-			10	05-1850		
35	W7X	1	S-			10	05-1850		
36	W7X	1	S-			10	05-1850		
37	W7X	1	S-			10	05-1850		
38	W7X	1	S-			10	05-1850		
39	W7X	1	S-			10	05-1850		
40	W7X	1	S-			10	05-1850		
41	W7X	1	S-			10	05-1850		
42	W7X	1	S-			10	05-1850		
43	W7X	1	S-			10	05-1850		
44	W7X	1	S-			10	05-1850		
45	W7X	1	S-			10	05-1850		
46	W7X	1	S-			10	05-1850		
47	W7X	1	S-			10	05-1850		
48	W7X	1	S-			10	05-1850		
49	W7X	1	S-			10	05-1850		
50	W7X	1	S-			10	05-1850		
51	W7X	1	S-			10	05-1850		
52	W7X	1	S-			10	05-1850		
53	W7X	1	S-			10	05-1850		
54	W7X	1	S-			10	05-1850		
55	W7X	1	S-			10	05-1850		
56	W7X	1	S-			10	05-1850		
57	W7X	1	S-			10	05-1850		
58	W7X	1	S-			10	05-1850		
59	W7X	1	S-			10	05-1850		
60	W7X	1	S-			10	05-1850		
61	W7X	1	S-			10	05-1850		
62	W7X	1	S-			10	05-1850		
63	W7X	1	S-			10	05-1850		
64	W7X	1	S-			10	05-1850		
65	W7X	1	S-			10	05-1850		
66	W7X	1	S-			10	05-1850		
67	W7X	1	S-			10	05-1850		
68	W7X	1	S-			10	05-1850		
69	W7X	1	S-			10	05-1850		
70	W7X	1	S-			10	05-1850		
71	W7X	1	S-			10	05-1850		
72	W7X	1	S-			10	05-1850		
73	W7X	1	S-			10	05-1850		
74	W7X	1	S-			10	05-1850		
75	W7X	1	S-			10	05-1850		
76	W7X	1	S-			10	05-1850		
77	W7X	1	S-			10	05-1850		
78	W7X	1	S-			10	05-1850		
79	W7X	1	S-			10	05-1850		
80	W7X	1	S-			10	05-1850		
81	W7X	1	S-			10	05-1850		
82	W7X	1	S-			10	05-1850		
83	W7X	1	S-			10	05-1850		
84	W7X	1	S-			10	05-1850		
85	W7X	1	S-			10	05-1850		
86	W7X	1	S-			10	05-1850		
87	W7X	1	S-			10	05-1850		
88	W7X	1	S-			10	05-1850		
89	W7X	1	S-			10	05-1850		
90	W7X	1	S-			10	05-1850		
91	W7X	1	S-			10	05-1850		
92	W7X	1	S-			10	05-1850		
93	W7X	1	S-			10	05-1850		
94	W7X	1	S-			10	05-1850		
95	W7X	1	S-			10	05-1850		
96	W7X	1	S-			10	05-1850		
97	W7X	1	S-			10	05-1850		
98	W7X	1	S-			10	05-1850		
99	W7X	1	S-			10	05-1850		
100	W7X	1	S-			10	05-1850		

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FORM 104

U.S. DEPARTMENT OF COMMERCE

MAR. BUREAU

Washington, D. C.

SURFACE WEATHER OBSERVATIONS (Washington National)

JUL 24 1962

Time (EST)	Sky and Clouds (Hundredths of Sky)	Visibility (Miles)		Barometric Pressure (Inches)	Sea Surface Temperature (F)	Air Temperature (F)	Wind Direction (True)	Wind Speed (Knots)	Wave Height (Feet)	Remarks and Significant Weather	
		Surface	At 1000'								
1428	W4X	1/2		S				↓ 1	035	R36UR35	
1432	W6X	3/4		S-				↓ 9	035	R36UR50	
1449	W6X	3/4		S-				↓ 9	033	R36UR40	
1452	W5X	5/8		S-	271	23 14		↓ 8	033	R36UR38	
1512	W5X	5/8		S-				↓ 7	033	R36UR35	
1528	W5X	5/8		S-				↓ 8	032	R36UR38	
1543	W5X	5/8		S-				↓ 6	032	R36UR36	
1654	W5X	7/8		S-	270	23 14		↓ 6	031	R36UR50	734
1712	W6X	1 1/8		S-				↓ 8	030	R36UR60+	
1626	W6X	1		S-				↓ 7	030	R36UR50	
1642	W6X	1 1/4		S-				↓ 8	030	R36UR60+	USBY 7/8 U1 1/8
1657	W5X	1 1/4		S-	259	23 14		↓ 9	028	R36UR60+	USBY 7/8 U1 1/8
1712	W5X	1 1/4		S-				↓ 10	028	R36UR60+	USBY 1 U1 1/2
1729	W6X	1 1/2		S-				↓ 7	028	R36UR60+	
1758	W6X	1 1/4		S-	252	23 15		↓ 9	026	R36UR60+	
1825	W6X	1 1/2		S-				↓ 8	024	R36UR60+	
1854	W6X	2 1/2		S-	243	23 16		↓ 10	023		90404
405 92610 40717 24323 9X0X2 11727 72054 90102 30039 4222											
1909	W7X	2 1/2		S-				↓ 10	021		
1915	W7X	2 1/2		2R-S-	228	23 16		↓ 9	019	22255	FIRST ZERO
2025	W6X	1 1/4		E-S--				↓ 9	017		
2055	W6X	2 1/4		E-S--	211	25 19		↓ 11	017	232023	PRESEF
2106	W6X	2 1/4		2R-				↓ 10	013		
2120	W6X	2 1/2		2R-F				↓ 9	011		
2135	W6X	2 1/2		2R-F	196	25 20		↓ 9	010	USBY N3	EE015022F207
2150	W6X	2 1/2		2R-F				↓ 8	007	USBY N3	PRESEF
2205	W6X	2 1/2		2R-F				↓ 5	005	USBY N3	
2227	W7X	3		2R-F	173	26 20		↓ 7	004	PRESEF	
2235	M7	3		2R-F				↓ 7	003		
NOT AM 22/4225 R36UR0											
2351	M6E	4		2R-F	161	26 20		↓ 4	000	PRESEF	

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UNITED STATES DEPARTMENT OF COMMERCE
WEATHER BUREAU

TA 631-0-1

Rev. 8/1/61

DECODING AVIATION WEATHER REPORTS

BASED ON INSTRUCTIONS IN MANUAL OF SURFACE OBSERVATIONS (WBAN), CIRCULAR N

STANDARD AVIATION REPORT FORMAT FOR MANNED STATIONS:

STATION IDENTIFICATION
TYPE OF REPORT

SKY AND CEILING
VISIBILITY

WEATHER
OBSTRUCTIONS TO VISION
SEA-LEVEL PRESSURE
TEMPERATURE
DEW POINT
WIND

ALTITUDE SETTING
HEIGHT OF BASES & TOPS (MSL)

REMARKS
CODED REMARKS

PIT -XM11V038007/8VL-FK 146/66/65-3/997/ 027/CIG 9V12 FK3 VSBY 1/2V1 80802 1607

EXAMPLE OF A RECORD OBSERVATION AS IT APPEARS IN A SEQUENCE COLLECTION. ELEMENTS OF THE OBSERVATION ARE EXPLAINED BELOW

PIT STATION IDENTIFICATION Symbol for Pittsburgh.

TYPE OF REPORT: The omission of type-of-report data identifies a scheduled record observation for the hour specified in the sequence heading; the time of an out-of-sequence, special observation is given as "S" followed by a time group (24-hour clock LST), e.g., "PIT S 0715E - XM . . ."

Local reports are identified by "LCL" and a time group. Locals are transmitted on local teletypewriter circuits only.

-XM11V03800 **SKY AND CEILING:** Partial obscuration; ceiling measured 1100 ft., variable broken; pilot's report of height of overcast 38,000 ft. Heights are expressed in hundreds of feet, (e.g., 40-4000 ft.) above SURFACE, and are prefixed to corresponding sky condition symbol. The letter "V" immediately following a numerical value indicates a ceiling varying by an amount reported in "Remarks." A classification designator is prefixed to ceiling layers. Absence of a designator indicates an unlimited ceiling. Classification designators:

M Measured.	■ Estimated height of cirriform cloud, based on persistency of layer.
A Aircraft.	E Estimated height of noncirriform cloud.
R Radiosonde balloon or Radar.	M Height of cirriform ceiling layer unknown.
B Balloon (ceiling or pilot).	/ Height of cirriform nonceiling layer is unknown.
W Indefinite.	

Sky condition symbols are:

- X Partial obscuration (0.1 to 0.9 sky hidden by surface-based obscuration).
- X Obscuration (1.0 sky hidden by surface-based obscuration).
- Clear (0.0 sky cover).
- ⊙ Scattered (0.1 to 0.3 sky cover).
- Broken (0.6 to 0.9 sky cover).
- ⦿ Overcast (1.0 sky cover).

In addition to indicating a partial obscuration (-X), the minus symbol (-) is used as a prefix to ⊙, ⊙, or ● symbols to identify thin layers aloft, i.e., to signify that the ratio of summation amounts of (1) transparent sky cover aloft at and below the level of the layer to (2) the total sky cover at and below this level is 1/2 or more.

In a combination of symbols, the phenomena coded in this portion of the report are reported in ascending order of height with respect to their distribution in space.

7/8V

VISIBILITY: Seven eighths mile, variable. Prevailing visibility is reported in statute miles and fractions. The letter "V" immediately following a visibility value indicates visibility is variable by an amount reported in "Remarks".

L-

WEATHER: Light drizzle. Weather symbols follow

TORNADO, WATERSPOUT, OR FUNNEL CLOUD. Not abbreviated.

T Thunderstorm	EW Sleet showers	SG Snow grains
T+ Heavy thunderstorm	IC Ice crystals	SP Snow pellets
A Sleet	L Drizzle	SW Snow showers
AP Small hail	R Rain	ZL Freezing drizzle
E Sleet	RW Rain showers	ZR Freezing rain
	S Snow	

A plus (+) following the symbols for precipitation indicates "heavy" intensity; a minus (-), "light"; a double minus (--), "very light"; the absence of a sign, "moderate" intensity, except intensity of hail is not reported.

FK

OBSTRUCTIONS TO VISION: Fog and smoke. The following symbols indicate obstructions to vision in aviation reports.

SD Blowing Dust	K Smoke	F Fog
BN Blowing Sand	H Haze	GF Ground Fog
BS Blowing Snow	D Dust	IF Ice Fog
BY Blowing Spray		

146

SEA-LEVEL PRESSURE: 1014.6 millibars. Three figures, representing tens, units, and tenths of millibars, indicate the sea-level pressure.

66

TEMPERATURE: 66°F. A minus (-) preceding the figures indicates a temperature below zero.

65

DEW POINT: 65°F. A minus (-) preceding the figures indicates a dew point below zero.

→3

WIND: From the west, three knots. Wind direction is indicated by arrows as follows:

↖ NW	↗ SE	↖ SW	↗ NE
↖ NW	↗ SE	↖ SW	↗ NE
↖ NW	↗ SE	↖ SW	↗ NE

Figures following the direction arrows indicate the speed in knots. "C" indicates calm; the arrow and figures are omitted. "E" as a suffix to wind speed signifies "estimated".

A plus (+) following the wind speed indicates gusts; the absence of a sign, a relatively steady wind. The peak speed of gusts follows the plus (+) symbol, or follows a "Q" symbol when squalls are reported.

Wind direction arrows and a time group immediately following the current wind data (and peak gust data if reported) indicates the representative direction of the wind preceding the shift and the time of the shift to minutes LST. E.g., ~ 1025E indicates a wind shift from the south-east at 1025 EST.

997

ALTITUDE SETTING: 29.97 inches. Three figures, representing units, tenths, and hundredths of inches, indicate the altimeter setting.

027

HEIGHT OF BASES AND TOPS: Broken layer; height of tops 2700 feet above MEAN SEA LEVEL. Height of bases reported by pilots for layers not visible from surface at weather station, when known, precedes amount symbol (⊙, ⊙, or ●, or "U" if amount is unknown). When layer was observed more than 20 minutes before ascribed time of observation, time in hours and minutes (24-hour clock) and time zone indicator precede rest of report. Distance and direction from station, when observed more than 20 nautical miles from airport, and direction of movement, when known, follow amount and height data.

CIG 9V12

FK3

VSBY 1/2V1

80802 1607

REMARKS: Ceiling variable 900 to 1200 feet, three-tenths of sky obscured by fog and smoke, visibility variable one-half to one mile. Teletypewriter symbols, contractions, or complete words are used to report significant meteorological phenomena that are not reportable elsewhere.

CODED REMARKS: Miscellaneous coded meteorological data transmitted at 3-hourly or 6-hourly intervals.

NON-METEOROLOGICAL DATA: Remarks concerning field conditions and the operation of radio facilities occasionally follow meteorological data.

Format for teletypewriter transmission:

[illegible]

Manually Observed Data

Manually Entered Data
Remarks and scheduled additional data whenever appropriate.

Example of transmitted report:

DCA M 10 220 11/2TRW-GF 203/ 64/ 64/3011/039/001/R36VR60 / VSBY 1V2
T W MOVG SE FQT LTGCG SW TB\$1

Data Reported and Explanatory Notes		Symbolic Form		Coded Data	Decoded Data
Station Designator.		III	DCA		Washington National Airport, D.C.
Ceiling designator (prefix to known heights of ceiling layer). A "U" in this column indicates that the layer is a cirriform ceiling layer - height unknown.			M		Height of layer measured as:
Height of first layer reported, hundreds of feet.			10		1000 feet.
Thickness indicator, i.e., "-" identifies a layer aloft as "thin" or surface-based obscuring phenomena (X) as partial. A "/" in this column indicates that the layer is a cirriform non-ceiling layer - height unknown.			(blank)		
Sky cover amount, lowest layer (0.1-0.5-0, 0.6-0.9-0, 10/10-0, X=surface-based obscuring phenomena).			0		Broken sky cover (0.6 to 0.9 of sky covered by cloud and hidden by obscuring phenomena at and below preceding height).
Ceiling designator (prefix to known heights of ceiling layer). A "U" in this column indicates that the layer is a cirriform ceiling layer - height unknown.			(blank)		
Height of second layer reported, hundreds of feet.			220		Sky-cover height 22,000 feet.
Thickness indicator, i.e., a "-" identifies layer as "thin". A "/" in this column indicates that the layer is a cirriform non-ceiling layer - height unknown.			(blank)		
Sky cover amount, second layer (0.1-0.5-0, 0.6-0.9-0, 10/10-0); or clear sky (zero tenths of sky cover = 0).			0		Overcast sky cover (100% of sky covered by cloud or hidden by obscuring phenomena at and below preceding height).
Prevailing visibility (statute miles).		vvv	11/2		1-1/2 statute miles.
Weather and obstructions to vision.		wwwwww	TRW-GF		Thunderstorm (T), light rain showers (RW-), ground fog (GF).

MANUALLY OBSERVED

Sea-level pressure, tens, units, and tenths mb.	PPP	293	1029.3 millibars.
Temperature, hundreds, tens, and units °F. ²	TTT	64	+64°F.
Dew point temperature, hundreds, tens, & units °F. ²	T _d T _d T _d	64	+64°F.
Wind direction and speed.	ddff	3011	300°, 11 knots.
Altimeter setting, units, tenths, & hundredths inches of mercury.	P P P _a P _a	039	30.39 inches of mercury.
Cumulative precipitation (units, tenths, & hundredths inches) for six-hour periods beginning 0000, 0600, 1200 and 1800 GMT.	RRR	001	0.01 inch of precipitation (liquid measure).
Instrument runway number.	Rnn	R36	Runway number 36.
Runway visual range in hundreds of feet; "60+" is coded for visual ranges exceeding 6000 ft., & "19-" for ranges of less than 2000 feet, or runway visibility in miles and tenths (where a transmissometer is available but runway visual range is not applicable), e.g., VVn.n, coded as VV1.3, as in MEA example on page 4 to report runway visibility 1.3 miles.	VRnn	60	6000 feet.

Miscellaneous:

Remarks added by observer in standard format and using standard weather symbols given in WBAN Manual of Surface Observations, Circular N, and authorized teletypewriter contractions, as given by FAA in "Contractions Manual".³ In the DCA example above the remarks portion, (VSBY 1V2 T W MOVG SE FQT LTGCG SW TB51) reports the following supplementary information:

- VSDY 1V2 - Prevailing visibility is variable from one to two statute miles.
- T W MOVG SE - Thunderstorm (other than "heavy") to west of station, moving toward the southeast.
- FQT LTGCG SW - Frequent lightning between clouds and ground to southwest of station.
- TB51 - Thunderstorm began 51 minutes after the preceding hour.

¹Manually observed data groups "drop out" at stations having limited hours of operation to leave blank spaces in columnized format during hours when personnel are not on duty.

²Normally, the first column of each of the 3-column code groups TTT and T_dT_dT_d is reserved for use of the figure "1" when temperatures exceed "99", or for "-" when temperatures are less than 0°F. A zero (0) appears in the second column when temperatures range from 10°F to -9°F. Otherwise, at some stations, sub-zero temperatures appear as the algebraic sum of 100 and the temperature (e.g., -8°F would be reported as -92, i.e., the sum of 100 & -8); for temperatures above 99°F, the hundreds figure is omitted (e.g., 102°F is reported as 02).

³Scheduled coded data (in 3- to 5-figure code groups) are appended at selected stations, following remarks, in accordance with Circular N, Chapter 10. These code groups are not of direct concern for aircraft operations.

⁴The lowest of the following layers (a) the lowest cloud layer covering 0.1 or more of the sky, or (b) the lowest layer of obscuring phenomena (aloft or on the surface) hiding 0.1 or more of the sky.

⁵The ceiling layer, if any, whenever it is not reported by the first sky cover group; otherwise, an operationally significant group. When more than two layers are present additional layers are reported as remarks.

⁶See Page 1 for explanation of selected standard weather symbols. Further information is contained in the Manual of Surface Observations (WBAN), Circular N.

Program 2 AMOS (Manned full- or part-time)
Formats for Teletypewriter Transmissions

Automatic Data		Manual Data		
A. III AMOS	PPP/TTT/TdTdTd/ddff/PdPdPd/RRR/RnnVVn.n//h _m hhhC _t C _s ...h _m hhhC _t C _s vv..vwWW..WW//Remarks			
B. III AMOS	/TTT/TdTdTdTd/ddff/PdPdPd/RRR/RnnVVn.n//h _m hhhC _t C _s ...h _m hhhC _t C _s vv..vwWW..WW PPP//Remarks			
EXAMPLES				
A. HVR AMOS	293/ 64/ 64/3011/039/001/R27VV2.1//100M2503K VSBY NZW21/2//320 1001 25074			
B. MEA AMOS	/ 74/ 66/3602/996/012/RO4VV1.3//M100220611/2TRW-GF 293//T W MOVG SE FQT LTGCG SW TB51			
Data Reported and Explanatory Notes ³		Symbol Form	Coded Data	Decoded Data
Automatic Data	Station designator	III	MEA	Meacham, Ore.
	Type designator		AMOS	Automatic Meteorological Observing System followed by 19 spaces (or 22 spaces where sea-level pressure is not reported automatically).
	Sea-level pressure (if automatic)	PPP	(Blank)	Not automatic at Meacham.
	Dry-bulb temperature (hundreds, or space or minus, ⁴ tens and units).	TTT	74	Seventy-four degrees F.
	Dewpoint temperature (space or minus, ⁴ tens and units).	TdTdTd	66	Sixty-six degrees F.
	Wind direction (degrees) and speed (knots)	ddff	3602	Wind from 360° at two knots.
	Altimeter setting, units, tenths & hundredths in. Hg.	PdPdPd	996	29.96 inches of mercury.
	Cumulative precipitation (units, tenths & hundredths of inches liquid state) for 6-hr. period beginning 0000, 0600, 1200 & 1800 GMT.	RRR	012	0.12 inch of precipitation (melted amount if catch is solid state).
	Instrument runway number, when appropriate. ⁵	Rnn	R36	Runway number 36 (visibility follows).
	Runway visibility for foregoing runway, or directional vaby, ⁵ in statute miles and tenths.	VVn.n	VV1.3	Visibility on runway 36 is 1.3 statute miles.
Manually Determined Data	Ceiling designator, prefixed to ht. (if known) & to amount symbol for layer to which designator applies.	h _m	M	Measured ceiling (height and/or character and amount follows).
	Height of first ² layer at or above surface (in hundreds of feet), followed by "V" when rapidly variable.	hhh	10	1000 feet (character and amount follows).
	Thickness indicator, when appropriate, i.e., "-" identifies "thin" layers aloft or "partial" obscuration at surface; otherwise it is omitted.	C _t	(Omitted)	Layer not evaluated as "thin."
	Sky-cover amount (0.1-0.5=0, 0.6-0.9=0, 10/10=0. "X"-10/10 surface-based obscuring phenomena, "-X"-less than 10/10 surface-based obscuring phenomena.	C _s	0	Broken sky cover aloft (0.6 to 0.9) of sky covered by sky-cover aloft & hidden by surface-based obscuring phenomena at & below level reported.
	Prevailing visibility, in statute miles & fractions, followed by "V" when rapidly variable.	vv..vv	1 1/2	1 1/2 statute miles.
	Weather and obstructions to vision.	WW..WW	TRW-GF	Thunderstorm "T," light rain showers "RW-," ground fog "GF."
	Sea-level pressure, tens, units & tenths of millibars, where not determined automatically.	PPP	293	1029.3 millibars.
Remarks preceded by two slants (plain language & authorized contractions, as appropriate).			T W MOVG SE FQT LTGCG SW TB51	Thunderstorm west, moving southeast, frequent cloud to ground lightning southwest, thunderstorm began 51 minutes after preceding hour.

¹ "h_mhhh" is reported by "U" when ht. of cirriform ceiling layer is unknown; as "/" when ht. of cirriform nonceiling layer is unknown.

² The "h_mhhhC_tC_s" group is repeated for other layers present, in ascending order of height.

³ More detailed information is contained in the Manual of Surface Observations (WBAN), Circular N, and on Page 1.

⁴ Reports of below zero temperatures may appear either as "minus" temperatures or as the algebraic sum of 100 and the temperature, e.g., a dew-point temperature of -10°F would be reported as -10 from some stations, but as 90 (i.e., 100 - 10) from others. Temperatures above 99°F are reported either as three figures (e.g., 102° is reported as 102) or by omitting the hundreds figure (e.g., 102° is reported as 02).

⁵ Where directional visibility is not associated with a runway "Rnn" is coded as RNO in lieu of a runway number.

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BRIEF FOR APPELLANTS

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19,989

PARK CENTRAL APARTMENTS, INC.

and

RANDALL H. HAGNER & CO.,

Appellants,

v.

STANLEY ROBINSON,

Appellee.

**APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

United States Court of Appeals
for the District of Columbia Circuit

FILED APR 29 1966

Nathan J. Paulson
CLERK

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(i)

STATEMENT OF QUESTION PRESENTED

The question presented is whether, in an action by a tenant injured by falling on ice on the sidewalk in front of his landlord's premises, the court erred in extending the landlord's duty of providing reasonably safe common approaches retained within his exclusive control, to publicly owned abutting property, thereby rendering the place of the fall immaterial to the issue of liability.

(iii)

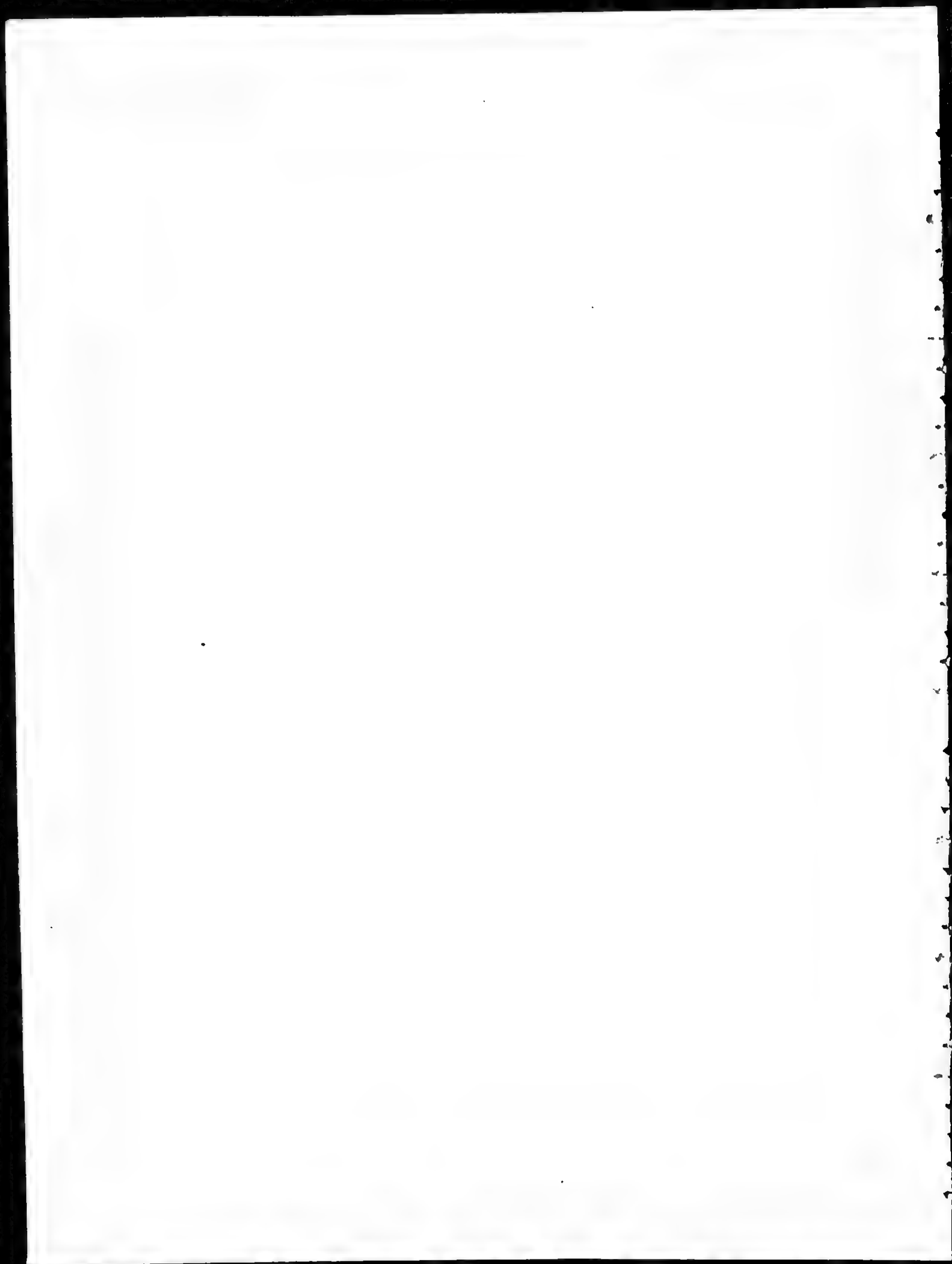
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* Cases or authorities chiefly relied upon are marked by asterisks.



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FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANTS

JURISDICTIONAL STATEMENT

The Jurisdiction of this Court for the purposes of this appeal is admitted.

STATEMENT OF THE CASE

In December, 1962, the city of Washington, D. C. had three rather heavy snow storms each occurring on a Friday afternoon or evening. The incident involved in this case occurred on Saturday at about 12:40

a.m., December 22, 1962 in front of the Park Central Apartments, 1900 F Street, N. W. Plaintiff below, Stanley M. Robinson, left his place of employment near 10th and Eye Streets, N.W. at 9:30 p.m., Friday, December 21, 1962 and walked to the Annapolis Drug Store in "very snowy and cold" weather. While there, he consumed a light supper and in company with a friend, Rena Stevens, proceeded to Ebbitt Hotel. While in the Ebbitt Hotel, he and Mrs. Stevens and the manager of the Alibi Room, a Mrs. Ethel Swergart, consumed two martinis each. He left the Ebbitt Hotel at about 12 midnight and walked Mrs. Stevens to a bus. He describes the weather as being below freezing, he also states that there was ice on the streets formed over top of the snow which had fallen and also ice on the sidewalk. He then took a taxicab to the Park Central Apartments where he has lived for the past 30 years. He alighted from the cab and took a few steps, "four or five and I fell." He states he fell because the walk area was a sheet of ice. He states there was no snow under the ice, because the snow had been cleared off and rain and sleet had fallen and had frozen on the sidewalk area. He prepared plaintiff's Exhibit No. 1, which was admitted in evidence without objections, and stated that he fell at a place where a mark had been made on the sidewalk area which was somewhere near the dividing line between the public sidewalk running east and west on 19th Street on the south side of the street and a walkway which ran from the sidewalk to the entrance of Park Central Apartments. He states that "I slipped and went down in a sitting position." He states he then rolled over on his back, held his leg up with his right hand and called to the cab driver to help him but the cab driver moved on. He states that at the time he was on the sidewalk a misty rain was falling. He states there was no sand on the sidewalk area. At the time of the incident, the plaintiff was wearing a heavy pair of rubber overshoes. The plaintiff testified on cross examination that when he went out of his office at 12:30 p.m. on Friday for a light lunch and it was snowing at that time and that about five inches of

snow fell during that particular snow storm. The plaintiff admits when he walked from the cocktail lounge to the bus stop and later when he walked in the street to find a cab he had difficulty walking and it was an extremely bad night and it had been snowing and raining and sleeting and freezing. It was snowing lightly when he saw Mrs. Stevens off on the bus. By the time he had reached the Park Central Apartments it was misty and raining and it was quite cold. He stated the cab was able to pull up to the curb at the Park Central Apartments because that area had been shoveled clear. He later testified that he had to step over a pile of snow after getting out of the cab to reach the sidewalk. He describes the sidewalk as a glaze of ice or a sheet of ice. He states his first impression was that the sidewalk was wet. He later found out that it was a sheet of ice. The plaintiff also testified that he did not know exactly where he had fallen, whether it was on public space or private sidewalk area. The mark he made on plaintiff Exhibit No. 1 was where he ended up after turning over on his back and trying to help himself before help arrived.

Mrs. Rena Stevens testified as to the weather conditions as related by Mr. Robinson as did Mrs. Ethel Swergart. Police Officer Ralph L. Robinson testified he received a report at the hospital from the plaintiff and went to the Park Central Apartments where the fall was reported to have occurred. He arrived there between 12:30 and 1:00 o'clock a.m. and the sidewalk and the private walkway were a sheet of ice and both sides of the street were ice and snow and there was a substantial amount of snow in the streets and on many of the sidewalks, but he was able to walk in the area of the Park Central Apartments. He admitted that he thought the fall occurred on the public sidewalk and that is why he investigated the incident. The officer also stated that there was a mist falling at the time and it was snowing throughout the general area of the District of Columbia and he did not see any sand or other abrasives on the sidewalk, but he did not get down to look to see if there was sand under the ice.

Plaintiff then called Mrs. Roberta R. Hayes, Manager of the Park Central Apartments, who testified that there were 317 units in the building and that about 70 of them were transient accommodations. She also testified that it had been snowing all day and she testified that she had employees from the apartment house out clearing the snow all day and all evening and the work was done continually throughout the day and chemicals were thrown on the sidewalk to melt the snow as it was falling. She testified that the sidewalk area was sanded around 9:30 by one John Kersey at her instructions and that John Kersey left to go home after 10:00 p.m. in the evening.

She stated that later that night she received a telephone call from the night desk clerk and dressed and went down to the front of the building and Mr. Robinson had already been removed. She states she did not find any sand on top of the ice but there was sand underneath a thin coating of ice and that she went out specifically to look at this. A tenant, Mr. Rearden, helped put sand down after Mr. Robinson's fall.

Selected portions of the deposition of Michael Rearden were then read in the record. Mr. Rearden testified that he helped Mr. Robinson up and he made a mark on plaintiff's Exhibit No. 1 to indicate the position Mr. Robinson was in when helped up. He also testified he did not see any sand on top of the sheet of ice in front of the building.

A weather chart was marked (plaintiff's Exhibit No. 3) which showed that 5.3 inches of snow fell on the 21st of December.

Defendants below made a motion at the end of plaintiff's case for a directed verdict in favor of the defendant which was denied.

The defendants called the workmen who had been working on the sidewalk area during the day of December 21, 1962. They stated that they continually shoveled the snow on the sidewalk and spread a chemical on the sidewalk after clearing it of the snow. The men who testified worked different shifts from early morning until 10:00 o'clock at

night. From 5:00 o'clock in the afternoon until 10:00 o'clock at night, Mr. Kersey was working alone. Mr. Kersey testified that he did not sand the walkway in front of the Park Central Apartments, but that he did keep the sidewalks clear and that he did use a chemical and he last remembers working on the sidewalk about 9:30 at night. He states he left for his home at about 11:00 o'clock and caught a bus at the corner of 19th and F, and he used the front door of the apartment when he left his employment that night and the sidewalks were "nice and ship-shape," "clean and clear, it was not slippery," and that he had put down a chemical to keep it from freezing. No snow was falling when he left for home at 11:00 o'clock, though it had been falling throughout the afternoon and evening and the sidewalks were damp or wet when he left. He admits that between 9:30 and 11:00 he checked the sidewalks, although he did not have to do any further work on them. He states when he left at 11:00 o'clock at night there was an engineer on duty. The engineer lives on the premises but does not perform any janitor's duties.

Oscar Pach, a witness, testified that he lived in the Park Central Apartments in a front apartment on the fourth floor and that he had gotten up in the middle of the night to go to the bathroom, and he looked out of the window in his bathroom and he saw a taxicab drive up and he saw a man fall out of the taxi on to the ground. He states he kept looking because he thought the man was drunk when the man did not move. Mr. Pach called the desk clerk downstairs and informed him there was a man lying on the ground outside.

Mr. Pach states from where he was standing he thought the man had fallen in the street. Mr. Pach also stated that he usually wears glasses but on this occasion he was not wearing them.

Dorothy Allshouse, a desk clerk at the Park Central Apartments stated sometime between 9:30 and 10:00 o'clock p.m. she saw Mr. Kersey carrying a bucket through the lobby and he went out the front door of the apartment.

Lorraine K. Dickerson, a telephone switchboard operator at Park Central Apartments, stated that about 9:30 p.m. she received a telephone call from the resident manager, Mrs. Hayes, and she relayed the message given her to John Kersey and her switchboard position does not afford her a view of the lobby.

The resident manager, Mrs. Hayes, was called and testified that transient accommodations are really apartments without kitchens or bachelor efficiency apartments, just a room and a bath, and most of them were rented to people by the month but sometimes they were rented by the day.

The deposition of Michael Melville was read in the record. He testified he was the night clerk, he went to work at 10:00 p.m. and at that time the sidewalks were clear of snow. He stated that he received a telephone call from a tenant and he and Michael Rearden went out front and helped pick the plaintiff up from the sidewalk area. He was shown plaintiff's Exhibit No. 1 and he indicated that he picked the plaintiff up from the sidewalk where it intersects with the private walkway. Mr. Melville also testified the building was open all night, and there was an engineer on duty who lives on the premises. He also described the sidewalks as being a sheet of ice when the plaintiff was picked up from there. He did not recall seeing any sand, but he did not get down and look.

The defendants then renewed their motion for a directed verdict and rested, and the court rendered its ruling on the entire case, finding in favor of the plaintiff.

STATEMENT OF POINTS

1. The court erred in extending the landlord's duty of providing reasonably safe common approaches, to publicly owned abutting property.
2. The court erred in denying defendant's motion for directed verdict

at the close of the plaintiff's case in that plaintiff failed to prove that he fell on defendant's property.

3. The court erred in denying defendant's motions for directed verdict in that plaintiff failed to prove a prima facie case of negligence.

SUMMARY OF ARGUMENT

Appellants aver that the lower court erred in extending the landlord's duty to provide reasonably safe common approaches within the exclusive control of the landlord to include publicly owned abutting property, namely, the public sidewalk adjacent to the property line and entrance of the Park Central Apartments. Appellants aver that the lower court should have followed the rationale set forth in *Radinsky v. Ellis*, 83 U.S. App. D.C. 172, 167 F.2d 745 (1948) without distinguishing between the invitee-licensee status of the appellee Robinson. The plaintiff-appellee testified to not knowing where he fell, whether on property owned by the appellant herein or public property owned and controlled by the District of Columbia. Liability on the part of the appellant is precluded by this omission in the plaintiff's case.

The lower court rendered the issue of the *place* of the fall immaterial in holding that the rationale of *Passagno v. Euclid Investment Company, Inc.*, 72 U.S. App. D.C. 141, 112 F.2d 577 (1940) was applicable to the present fact situation. The *Passagno* case is distinguishable upon its facts from the present case and clearly inapplicable.

The testimony offered in the lower court on the issue of negligence strongly favors the position of the defendants that exhaustive efforts were made to provide a reasonably safe walkway for the safety of all concerned. The severely inclement weather and the time of night rendered further efforts futile.

A judgment for the defendants should have been rendered.

ARGUMENT

The District of Columbia case of *Radinsky v. Ellis*, 83 U.S. App. D.C. 172, 167 F.2d 745 (1948) clearly held that the duty of removing snow from sidewalks is not imposed upon property owners by the common law. Sidewalks in the District of Columbia extend from the curb line of the street to the property line of abutting lots. They are publicly owned and are controlled exclusively by the municipal authorities of the District of Columbia. It is therefore primarily the duty of the local government to keep the sidewalks in a reasonably safe condition after a snowfall. The case held further that the owner or occupant of real estate owes no duty to pedestrians to clear or to make safe for walking, ice and snow which has naturally accumulated on the sidewalk in front of it, unless a statute affirmatively imposes that duty.

Admittedly, the present case involves an invitee (a tenant in the Park Central Apartments) injured when he fell near the dividing line between the public sidewalk and the walkway which ran from the sidewalk to the entrance of the Park Central Apartments. The lower court held that the necessity of transgressing public property before reaching private property, and the designated status "invitee" entitled the appellee to protection against dangerous conditions by the abutting land owner regardless of ownership and control, and regardless of the rule set forth in *Radinsky v. Ellis, supra*.

The lower court, in permitting this extension of liability referred to the District of Columbia case of *Passagno v. Euclid Investment Company, Inc.*, 72 U.S. App. D.C. 141, 112 F.2d 577 (1940). That case involved a guest of a tenant injured when she slipped and fell on a private driveway or walkway over which the apartment owner had retained exclusive control; the driveway or walkway was a common approach used by all tenants and guests. The distinguishing feature in the case is that the area of the fall, the common approach, was owned by the appellant,

Euclid Investment Company, Inc., constructed by the appellant, and under his exclusive control. The court stated:

"All that we hold is that there was a duty in the circumstances to be reasonably alert that persons lawfully using the *property* should be safeguarded against danger which could, in the exercise of ordinary care, be foreseen and prevented." (Emphasis added.)

In referring to the "property," the court was speaking of property owned by the Euclid Investment Company.

In the present case, the lower court extended the *Passagno* case to include abutting public property which an invitee would be compelled to transgress. This extension by the lower court was unsupported and an arbitrary application of the rationale set forth in *Passagno v. Euclid Investment Company, Inc.* The lower court stated at page 140 of the Transcript of Proceedings:

"This court would go further, however, and would hold that the rule requiring the owner of a multiple dwelling to provide a safe means of ingress and egress obviously is not limited to private property. It must include the portion of the sidewalk immediately adjoining or abutting the entrance to private property."

The position taken by the lower court relieves the plaintiff of the burden of proving that his fall occurred on property owned by the appellants herein and was clearly prejudicial to the appellants' case. The lower court equated the language of the *Passagno* case, "common approaches" with providing invitees with a safe means of ingress and egress, however, failed to distinguish that the *Passagno* case concerned a fall on a privately owned driveway.

At page 148 of the Transcript of Proceedings, the Court stated:

"If the place, where he fell, was a determinative factor, the case would be ruled by the decision in *Altemus v.*

Talmadge, 61 U.S. App. D.C. 148, 58 F.2d 874, also the decision of the Court of Appeals for this Circuit."

The *Altemus* case involved a dangerous hole or depression in the pavement which existed on both District of Columbia property and the property of the appellant, Altemus. The plaintiff in that case, while walking, stepped into the hole and was injured. The trial court held both the District of Columbia and the private property owner liable on the basis of joint and concurring negligence.

The *Altemus* case can be distinguished in that it did not involve an ice-and-snow, slip-and-fall occurrence wherein the District of Columbia case law has placed the sole responsibility for the clearing of public sidewalks upon the District of Columbia. *Radinsky v. Ellis, supra*. The *Altemus* case involved common law negligence between joint tortfeasors in permitting a hole or depression to exist and resulting in injuries to the plaintiff Talmadge. The rationale of the lower court in applying the rule on defects found in the *Altemus* case ignores the effect of *Radinsky v. Ellis, supra*, which places upon the District of Columbia, the responsibility for clearing ice and snow from public sidewalks. The ultimate conclusion of the lower court's rationale would absolve the District of Columbia from liability for injuries sustained by invitees resulting from defects or ice and snow upon public walkways and adjacent to multiple dwellings, public buildings, etc., over which an invitee must pass to enter a dwelling or public building.

The facts as set forth in the statement of the case adequately demonstrate that the appellants herein, through their agents and employees made exhaustive efforts during the day and evening hours of Friday, December 21, 1962 to provide for reasonably safe walking conditions. The severity of the inclement weather, as testified to by Officer Robinson, Mrs. Stevens, Mrs. Hayes, as well as the plaintiff himself, created a precarious, and somewhat slippery sidewalk condition. The efforts of the management and employees of the Park Central Apartments included

continuous clearing of the sidewalk, the use of chemicals and sand, and diligent efforts until late evening. The precipitation was unquestionably continuous throughout the day and evening and in fact, until the very time of the plaintiff's fall. The temperature was unquestionably below freezing and a mixture of snow and rain prevailed throughout the early hours of the morning of December 22. *C. W. Simpson Co., Inc. v. Langley*, 76 U.S. App. D.C. 365, 131 F.2d 869 (1942).

The employees of the Park Central Apartments testified to the sidewalk being passable at approximately 10:30 p.m. as did the investigating police officer, Ralph Robinson. The apartment manager was able to observe the sand underneath the thin layer of ice.

The appellants herein made every possible effort to render the sidewalk area in front of the Park Central Apartments safe for all concerned. The overwhelming extent of the precipitation should not be used to create a situation wherein the apartment management would be liable if it failed to clear the area and likewise liable after diligent efforts to clear the area. Accordingly, appellants aver that negligence was not proven upon the facts elicited through the testimony and evidence, and if proven, the negligence was nullified by the contributory negligence of the plaintiff-appellee.

From the foregoing argument and case law, appellants pray that a directed verdict be entered in their favor or the judgment of the lower court reversed and the case remanded for a new trial.

Respectfully submitted,

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BRIEF FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19,989

PARK CENTRAL APARTMENTS, INC.

and

RANDALL H. HAGNER & CO.,

Appellants,

v.

STANLEY ROBINSON,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States Court of Appeals
for the District of Columbia Circuit

FILED MAY 16 1966

Nathan J. Paulson
CLERK

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Counsel for Appellee

(i)

STATEMENT OF QUESTION PRESENTED

Appellee does not agree with Appellants' Statement of Question Presented. Appellee believes the question to be as follows:

Whether an apartment-hotel owner-operator owes a duty to an invitee (tenant) to safeguard him against dangers on the private walkway entrance at its junction with the sidewalk which dangers could, in the exercise of ordinary care, have been foreseen and prevented.

(iii)

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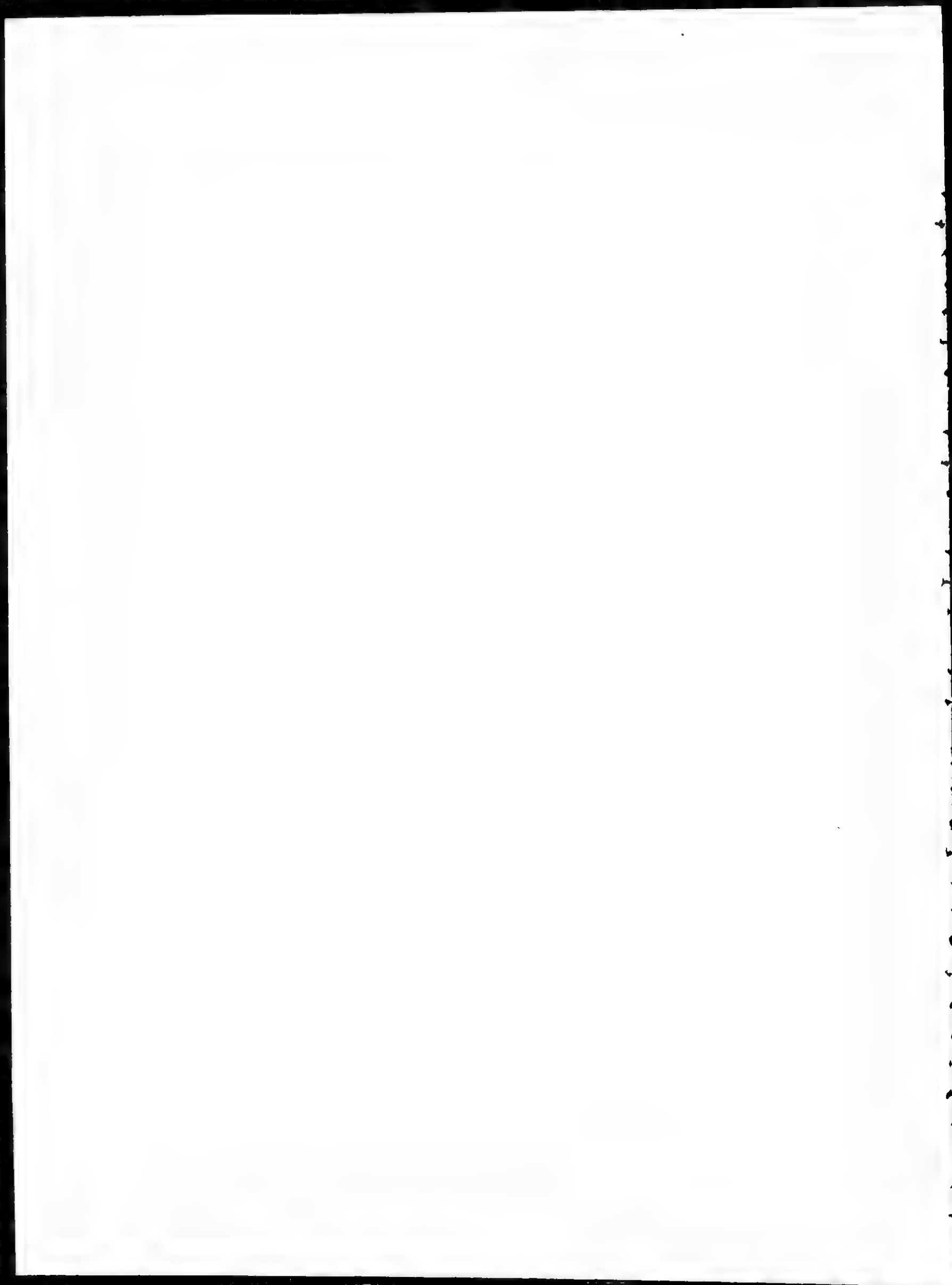
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PARK CENTRAL APARTMENTS, INC.
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Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEE

COUNTER-STATEMENT OF THE CASE

Since Appellants (hereinafter referred to as Defendants) made no reference, as required by Rule 17(b)(5), to the joint appendix or transcript of the testimony; and incorrectly summarized the testimony; Appellee (hereinafter referred to as Plaintiff) finds it necessary to make a somewhat detailed Counter-Statement of the Case.

December 21, 1962 was very snowy and cold (J.A. 19). The plaintiff left his place of employment at 9:00 p.m. Friday, December 21, 1962, and walked to the Annapolis Hotel Drug Store where he consumed a bowl of vegetable soup, a ham sandwich, a cup of black coffee, and a glass of milk (J.A. 19). He then went with a friend, Rena Stevens, to visit another mutual friend who was the manager of the Alibi Room at the Ebbitt Hotel. They arrived at 10 minutes to 10 p.m. (J.A. 20). They remained there until 12:10 a.m. (J.A. 20). During that time plaintiff had 2 martinis; one when he arrived, and the second one was about 11 p.m. (J.A. 21). He also consumed a bowl of potato chips (J.A. 21). As they were about to leave, the manager delayed them until she could sprinkle sand on the sidewalk in front of the hotel (J.A. 21). The plaintiff took Mrs. Stevens to her bus stop at the rear entrance of the Annapolis Hotel on 12th Street (J.A. 21). He waited until she boarded a bus and then attempted to catch a cab to 1900 F Street. After some difficulty, he caught a cab and arrived at 1900 F Street about 12:40 a.m. (J.A. 22). The cab was then headed east and stopped on the south side of the street. He paid the driver and alighted from the cab onto the sidewalk. He took four or five steps and fell (J.A. 23). The walk area in front of 1900 F Street was a sheet of ice and that caused him to fall (J.A. 23). There was no sand or any other abrasive on the walk area (J.A. 23). He was approximately half way from the south curb to the apartment-hotel entrance when he fell (J.A. 23). This distance from the south curb to the entrance of the building is 29 feet 8 inches (J.A. 24). The distance from the entrance to the public sidewalk is 17 feet 8 inches; the public sidewalk to the curb is 12 feet. A diagram, prepared by the plaintiff, showing the public and private walk area and its measurements, was offered without objection as plaintiff's Exhibit No. 1 (J.A. 24). The plaintiff testified he fell approximately at the same place where there was a red X and circle on the diagram (J.A. 25). The plaintiff said he slipped and went down in a sitting position (J.A. 25). He was almost half way to the

door when he fell (J.A. 38). He broke his left leg when he fell (J.A. 25). There was no sand on the walkway (J.A. 26); two young men carried him in (J.A. 26). The plaintiff was wearing a heavy pair of rubber overshoes (J.A. 26).

On cross examination plaintiff testified it was snowing that morning when he went to work (J.A. 27). He lived at the Park Central seven years (J.A. 27). It was easier to walk in the snow (J.A. 27). The two martinis had no effect on him (J.A. 28). When he left the Ebbitt Hotel it had stopped snowing; there was a misty rain (J.A. 29). When he alighted from the cab, he stepped onto the sidewalk in front of the building main entrance (J.A. 30). There was a light misty rain coming down. His first impression when the cab stopped was that the concrete sidewalk was wet. After he took about three steps he realized it was ice (J.A. 32). The cab stopped about six inches from the curb when he alighted. He could walk straight ahead to the entrance (J.A. 34). He took 4 or 5 steps after alighting. The plaintiff is about 6 feet 6 inches tall; his steps are about 2-1/2 to 3 feet each. The plaintiff slipped and fell where he ended up on the walk area. He hadn't moved to any degree at all (J.A. 37). He went backwards from a sitting position to look at his leg (J.A. 37). When he fell he went straight down in a sitting position (J.A. 38).

Mrs. Stevens corroborated the plaintiff in regard to the weather, their walk from the Annapolis to the Ebbitt Hotel and his sobriety. Mrs. Sweigart confirmed the testimony of Mrs. Stevens and Mr. Robinson.

Police Officer Ralph L. Robinson testified he received a call to investigate a fall at 1900 F Street; that he arrived there between 12:30 and 1 a.m. The areaway and the sidewalk at 1900 F Street was a sheet of ice (J.A. 46). The areaway and the public sidewalk, which is shown on Plaintiff's Exhibit 1, is concrete and indistinguishable (J.A. 46). The police officer said he was able to walk where the snow was unshoveled (J.A. 47). He inspected the area after the plaintiff had been removed to the

hospital. He saw the plaintiff at the hospital; he did not smell the odor of alcohol on his breath (J.A. 49). Snow was not falling at the time of his inspection; there was a mist (J.A. 49). When he spoke to the plaintiff he did not learn exactly where he fell (J.A. 49). He was not obligated under his duties to determine whether the plaintiff fell on the public sidewalk. He notified Corporation Counsel which he would have done whether the plaintiff fell on the public sidewalk or on the walk area adjacent to the public sidewalk (J.A. 50). The police officer also testified he saw no sand or other abrasive on the sidewalk or areaway in front of 1900 F Street (J.A. 50).

The plaintiff offered and there were received in evidence certain interrogatories (J.A. 12) propounded to the defendants and answers (J.A. 15) thereto wherein the defendants, through Mrs. Roberta Hayes, the apartment-hotel manager, answered as follows—that on Friday, December 21, 1962, the snow was shoveled from the front entrance at 1900 F Street to the curb several times during the day; at 5 p.m. she ordered "Quick Melt" applied to the sidewalk in front of the building; at 9 p.m. she ordered that the sidewalk be sanded; between 9:30 and 10 p.m. the area was sanded by John Kersey, one of the employees. But John Kersey testified he did *not* sand that area that night (J.A. 71).

Plaintiff offered certain portions of the deposition of Roberta Hayes, defendants' apartment-hotel manager, under Federal Rules of Civil Procedure 26(d)(2) on the ground that the witness Hayes was a managing agent of one of the corporate defendants but, upon objection by defendants which objection was sustained, plaintiff called Mrs. Hayes as a witness. Mrs. Hayes testified that she is manager of the Park Central Hotel (J.A. 51); that she was manager in December of 1962; that there are 317 units in the building; that 69 or 70 are transient accommodations (J.A. 51); that she has been manager there about 10 years; that it snowed all day long on December 21, 1962; that there is only one public entrance to the apartment-hotel (J.A. 52); she described the entrance way into the

hotel as a "T" with the sidewalk crossing an areaway directly in front of the front door; that all of the areaway is concrete which is the same as the sidewalk (J.A. 52); that she had a crew cleaning the walkway and sidewalk all day long; that she cleaned the sidewalk down to the cement three times that day, early in the morning, at noon and at 5 o'clock (J.A. 53); that she had three shifts and that John Kersey was on the 3-11 p.m. shift (J.A. 53). In addition to the shifts, one man, known as the engineer, lived on the premises. After the sidewalk was cleaned, chemicals were used to encourage melting; it is better to put the chemical directly onto the cement; it does not have much effect if placed on snow (J.A. 54). Between 9 and 9:30 p.m. she had occasion to examine the walkway and sidewalk in front of 1900 F Street from her apartment window which was on the 5th floor. She saw a light covering and thought the entrance way and adjacent sidewalk in front of 1900 F Street needed attention (J.A. 55). This witness testified further that sand, at that time, would be better than a chemical to prevent slipperiness (J.A. 56). She phoned the desk and directed John Kersey to apply sand. She did not check on John Kersey to see if he followed her instructions (J.A. 56). Sometime later, she received a call from the night clerk, Michael Melville, that the plaintiff had been injured (J.A. 56). She dressed and went down to the lobby. The plaintiff had been removed in an ambulance by that time. She examined the areaway and the public sidewalk in front of 1900 F Street; it was completely covered by ice (J.A. 56). This witness, the manager, testified there was brown sand underneath the ice; she assumed John Kersey put sand down because he was the only person available who could have done that, but she never inquired of John Kersey if he sanded (J.A. 57). There was ample sand available for that purpose; it was located in a big wood box in the storage area (J.A. 56). The manager inspected the walkway area and the sidewalk in front of 1900 F Street. Both needed sand (J.A. 58). When she went out to look at the area and sidewalk, Mr. Rarden accompanied her (J.A. 58). Rarden and Melville

pointed out the place where they picked up the plaintiff after his fall. It was in the general location of the spot marked on Plaintiff's Exhibit 1 (J.A. 58). John Kersey was the general porter for the evening shift. He was instructed to watch the sidewalk that evening (J.A. 60). She kept abreast of the weather reports that evening, she ordered sand when she heard the temperature was dropping and was freezing (J.A. 60). She notified the telephone operator on duty to locate Kersey and tell him to sand (J.A. 61). The brown sand was ordered each fall for the purpose of sanding the sidewalks (J.A. 61). When the employees shoveled the sidewalk area, they continued to shovel to the curb so that a cab, stopped in front of the building, would permit a person to alight from the cab without stepping into the snow (J.A. 62).

The plaintiff offered and there was received in evidence the local climatological data for the District of Columbia for the month of December 1962 as plaintiff's Exhibits Number 2 and 3 (J.A. 65). There was 5.3" of snow on the 21st.

The plaintiff offered and there was received in evidence certain portions of the deposition of Michael Rarden who was then in the military service in the Orient (J.A. 68). This witness testified through his deposition (J.A. 94), taken on November 26, 1963, that he was then employed in the Internal Revenue Service; that he was attending George Washington University Law School; that he was a graduate of Idaho State University; that he lived at 1900 F Street; that on Friday, December 21, 1962, it had snowed during the day; that he went to a movie during the early part of the evening; that between 10 and 10:30 p.m. he returned to 1900 F Street; that when he went out to the movie between 7 and 7:30 p.m. all of the snow had been cleared from the walkway and public sidewalk in front of 1900 F Street; when he returned from the movie this same walkway was very slick and he nearly fell down; when he went in the door he commented to the people who worked there about the condition of the sidewalk (J.A. 102). He had no trouble walking from the

movie to 1900 F Street over the unshoveled sidewalk area (J.A. 103). He was in the lobby, talking to the night clerk, when the plaintiff was injured. He and the night clerk went out to help the plaintiff in. The area-way and the sidewalk were a sheet of ice; he marked on plaintiff's Exhibit 1 where they picked up the plaintiff. This was on the walkway area at its juncture with the public sidewalk (J.A. 97). The cross of the red "X" was placed on the walk area (plaintiff's Exhibit 1). He said the plaintiff was aware of what had happened. They carried him into the lobby. The walkway and the sidewalk where they found the plaintiff were glazed ice; there was no sand on the ice (J.A. 98) and he could see none anywhere. The plaintiff was sober; he couldn't smell anything on his breath (J.A. 98); when the resident manager came down, after the plaintiff was removed to the hospital, he told her that the sidewalks were very slick and were glazed ice and he offered to put sand down (J.A. 99).

John Kersey, called by the plaintiff, testified that he was employed at that time by the defendants and that he was on the shift from 3-11 p.m. (J.A. 71). He testified that on December 21, 1962, he did not sand the walkway in front of 1900 F Street or the sidewalk in front of the walkway at any time (J.A. 71). He said he shoveled and cleaned the walkway and sidewalk but he did not apply sand. On cross examination by counsel for defendants he said the sidewalk was clear and no precipitation on it when he went home at 11 o'clock (J.A. 72). The plaintiff rested; defendants made a motion for directed verdict which was denied (J.A. 81).

The defendants then called Oscar Pach, a very elderly gentleman, who testified that he lived on the 4th floor; that he had gotten up in the middle of the night to go to the bathroom; he couldn't remember because it had been three years ago (J.A. 82); he saw a man getting out of a taxicab; and the only thing he could remember is that he fell when he got out. On cross examination this witness said some of the things he assumed because he wasn't there; he was looking out of a four-story window; he wears glasses but he didn't have them on at the time (J.A. 83).

This witness admitted that during the noon recess of that day, he thought the incident occurred on a nice day; he did not know whether he saw the man fall out of the taxi or get out of the taxi (J.A. 83).

The defendants offered other workmen employees who shoveled snow during the day. Each one denied that he put sand down that day; however they knew sand was available for such a purpose.

Michael Melville, who testified by way of deposition in behalf of the defendants, stated that the plaintiff was found at the intersection of the public and private walk going into the main entrance of the building (J.A. 106); that the walk area and the sidewalk in front of 1900 F Street at the time was a sheet of ice (J.A. 109); that it was the duty of the engineer, who lived on the premises, to take care of the entranceway when necessary; that he was available for handling luggage for transient guests and any other such matters; he also testified that the plaintiff was sober and he smelled no alcohol on his breath (J.A. 109).

Trial Court's Findings of Fact and Conclusions of Law

At the conclusion of the entire case, the Trial Court stated that its Memorandum Opinion pertaining to the denial of the defendants' Motion for Directed Verdict and the Opinion of the Court at the conclusion of the defendants' testimony would constitute the Findings of Fact and Conclusions of Law. It would appear therein that the Trial Court made the following FINDINGS OF FACT:

1. The plaintiff was a tenant in the defendants' apartment-hotel which had 317 units, 69 of which were for transient occupancy (J.A. 77).
2. Shortly after midnight on the night of December 21-22, 1962, the plaintiff alighted from a taxicab; started to walk across the sidewalk and the adjacent private walkway to the entrance; he slipped on the ice and was injured (J.A. 77).
3. The sidewalk and the adjacent walkway in front of the hotel en-

trance were covered by the same type of concrete; there was no difference in the level of the concrete and no difference in the appearance. It was difficult to determine exactly where the sidewalk ended and the private walkway began (J.A. 77, 78 and 90).

4. The plaintiff slipped and fell on the borderline between the private walkway and the sidewalk (J.A. 78, 90).

5. When the plaintiff slipped and fell, the sidewalk in front of the hotel and the walkway between the sidewalk and hotel entrance were covered by a sheet of ice and were slippery (J.A. 91).

6. Precipitation in one form or another continued on December 21, 1962 without interruption. 5.3 inches of snow, which had been falling throughout the day, had ceased sometime prior to the plaintiff's fall (J.A. 77). After the snowfall stopped, the precipitation continued in the form of a freezing rain (J.A. 91).

7. The defendants, through their employees, had shoveled snow off the private walkway and off the sidewalk in front of the building during the day of December 21, 1962, and thereafter they scattered a chemical which would expedite the melting of the snow. When more snow fell this operation was repeated. This process was continued throughout the day and was carried on by different shifts of employees but it ceased at 9:45 p.m. No more clearing was done after that time (J.A. 79, 92).

8. The defendants undertook the task of clearing the sidewalk to the same extent they had cleared the private walkway (J.A. 91).

9. If the defendants had continued through the evening their clearing operation pertaining to the sidewalk and walkway in front of the hotel, the sheet of ice (which was present when the plaintiff fell) would not have been permitted to form (J.A. 79).

10. The defendants had one or more employees available at all times, during the day and the night, to take care of any dangerous conditions in front of the apartment-hotel (J.A. 92).

11. The defendants were negligent to stop the work that had been going on all day and evening and take no precautions for late arrivals (J.A. 93). The defendants were negligent in failing to cause a continuation of the work of keeping the area clear after 9:45 p.m.; that negligence was the proximate cause of the accident to the plaintiff (J.A. 93).

12. There was no factual evidence of contributory negligence on the part of the plaintiff (J.A. 79, 93).

It would likewise appear that the Trial Court made the following CONCLUSIONS OF LAW:

1. The defendants were negligent and their negligence was the proximate cause of the plaintiff's injuries (J.A. 93).
2. The plaintiff was not contributorily negligent (J.A. 94).
3. The plaintiff is entitled to recover (J.A. 94).

SUMMARY OF ARGUMENT

Based on the overwhelming evidence, most of which was uncontradicted, and the Trial Court's Findings of Fact which are controlling unless clearly erroneous the plaintiff, a tenant in the defendants' large apartment-hotel, was seriously injured when he was caused to fall by an icy and slippery condition which existed on the private walkway and adjacent sidewalk in front of the defendants' apartment-hotel. At the point on the private walkway where the plaintiff slipped and fell it joins the public sidewalk which is at the same level, of the same type of concrete and is actually indistinguishable. The icy and slippery condition, which existed at the time of the plaintiff's fall, covered the walkway and the sidewalk from the building entrance to the street curb. This dangerous condition was negligently created by the defendants and could have been removed and prevented by the exercise of ordinary care if they had *not* ceased snow removal and clearing operations some three or more hours before the plaintiff's fall; or if they had taken the prop-

er precautions to prevent the dangerous condition existing on the entranceway to its premises at the time of the plaintiff's fall. The defendants had employees and facilities available at that time for such purposes; but failed to use them.

Under *Pessagno v. Euclid Investment Co., Inc.*, 72 U.S. App. D.C. 141, 112 F.2d 577, and *Altemus v. Talmadge*, 61 U.S. App. D.C. 148, 58 F.2d 874, the judgment below should be affirmed.

ARGUMENT

1. In propounding a legal theory, set forth in defendants' brief as their first Statement of Points, the defendants ignored the evidence and the Trial Court's Findings of Fact which are binding in a non-jury trial unless clearly erroneous.

A. Rule 52 of the Federal Rules of Civil Procedures provides:

"Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses . . . If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein."

B. Trial Court Findings

The trial court found that the plaintiff was a tenant in the defendants' apartment-hotel which had 317 units, 69 of which were for hotel occupancy (J.A. 77); that shortly after midnight on the night of December 21-22, 1962 the plaintiff alighted from a taxi; started to walk across the sidewalk and the adjacent walkway to the apartment-hotel entrance; he slipped on the ice and was injured (J.A. 77); the sidewalk and adjacent walkway in front of the hotel entrance were covered by the same type of concrete; there was no difference in the level or appearance of the concrete; it was difficult to determine exactly where the sidewalk ended and the private walkway began (J.A. 77, 78, 90); the plaintiff slipped on the

borderline between the private walkway and the sidewalk (J.A. 78, 90); when he slipped, the sidewalk in front of the hotel and the walkway between the sidewalk and hotel entrance were covered by a sheet of ice and were slippery (J.A. 91); the snowfall had stopped sometime before the plaintiff fell; precipitation continued in the form of a freezing rain (J.A. 77, 91); the defendants, through their employees, had shoveled snow off the private walkway and off the sidewalk in front of the building several times during the day of December 21, 1962, and thereafter they scattered a chemical which would expedite the melting of the snow; when more snow fell this operation was repeated; this procedure ceased at 9:45 p.m.; no more clearing was done after that time (J.A. 79, 92); the defendants undertook the task of clearing the sidewalk to the same extent they had cleared the private walkway (J.A. 91); if the defendants had continued their clearing operations through the evening the sheet of ice, which was present when the plaintiff slipped and fell, would not have been permitted to form (J.A. 79); the defendants had one or more employees available at all times, during the day and the night, to take care of any dangerous conditions in front of the apartment-hotel (J.A. 92); the defendants were negligent to stop the work which had been going on all day and evening and take no precautions for late arrivals; they were negligent in failing to cause a continuation of the work of keeping the area clear after 9:45 p.m.; that negligence was the proximate cause of the accident to the plaintiff (J.A. 93); there was no factual evidence of contributory negligence (J.A. 79, 93).

C. The Trial Court findings were uncontradicted as to

- (1) The defendants' removal of snow from the sidewalk and walkway in front of the apartment-hotel.
- (2) Use of chemicals to encourage melting.
- (3) Location and relationship of the private walkway to the sidewalk in front of the apartment-hotel.

(4) Icy and slippery condition of the sidewalk and private walkway when the plaintiff slipped and fell.

(5) Place where the plaintiff slipped and fell which was on the private walkway at its junction with the sidewalk.

(6) Time of cessation of clearing operations on the walkway and adjacent sidewalk by the defendants.

(7) Formation of a sheet of ice on walkway and adjacent sidewalk from apartment-hotel entrance to curb between 9:45 p.m. and time of plaintiff's fall after midnight.

(8) Availability of employees to continue clearing operations or sand after 9:45 p.m.

D. Other evidence supporting negligence on the part of the defendants and a finding for the plaintiff.

(1) Between 9 and 9:30 p.m. the manager of the apartment-hotel observed the walkway and sidewalk in front of the building. She realized it needed attention (J.A. 55). She directed John Kersey, an employee, to sand because sand would be better to prevent slipperiness, and it would have a better effect on the freezing condition at that time than a chemical (J.A. 56); the manager admitted that she did not check Kersey to see if he followed her instructions.

(2) Kersey testified without equivocation that he did not sand (J.A. 71). Kersey was the only individual who could have sanded (J.A. 57).

(3) Rarden reported a slippery condition at 10:30 p.m. when he nearly fell (J.A. 102, 103). This was while Kersey was still on duty and two hours before the plaintiff was injured.

(4) Rarden found no sand when he picked up the plaintiff (J.A. 98).

(5) Officer Robinson observed no sand when he investigated the sidewalk and walkway in front of the apartment-hotel (J.A. 50).

(6) The plaintiff testified there was no sand (J.A. 26).

(7) Examination of Plaintiff's Exhibit 1 will show the cross of the X mark as being on the private walkway side of the dividing line between the walkway and the sidewalk. Further, plaintiff testified that he was approximately halfway to the entrance from the south curb when he slipped and fell (J.A. 23) and he went backwards to look at his leg (J.A. 37). It was after that, that he was found by Rarden who placed the red X at the point he found the plaintiff. This was corroborated by Melville, the night clerk.

E. Even though the defendants undertook to maintain the public sidewalk and were negligent in such undertaking, as well as the maintenance of the private walkway adjacent thereto, it was not necessary to the plaintiff's verdict, as argued by defendants in their brief, to extend the landlord's duty to provide reasonably safe common approaches to include publicly owned abutting property because the plaintiff slipped and fell on the private walkway entrance to the defendants' apartment-hotel at its junction with but not on the public sidewalk.

2. Defendants admit the Findings of Fact but mis-apply the Law

A. Defendants, in their brief, nowhere question the findings of fact of the Trial Court. Apparently, they accept the Trial Court's findings because at page 8 of their brief they state —

"Admittedly, the present case involves an invitee . . . injured when he fell near the dividing line between the public sidewalk and the walkway which ran from the sidewalk to the entrance . . ."

B. Defendants mis-apply the Law.

(1) Although the plaintiff slipped and fell on the private walk-

way at its junction with the sidewalk, both of which had been shoveled, cleared and chemically treated by the defendants over a 14 hour period; which operations had ceased at 9:45 p.m.; as a result of which efforts or lack of continued efforts on the part of the defendants and their failure to sand the areas, they negligently permitted the formation of a sheet of ice which was the proximate cause of the plaintiff's injuries — the defendants argue they are not responsible because of *Radinsky v. Ellis*, 83 U.S. App. D.C. 172, 167 F.2d 745.

(2) *Radinsky v. Ellis* does not apply to the facts in this case. In *Radinsky*, an action was brought against an apartment house owner for injuries sustained by a pedestrian school boy when he slipped and fell on an icy sidewalk in front of the building. The Court there held that the owner or occupant of real estate owes no duty to pedestrians to clear, or make safe for walking, ice and snow which has naturally accumulated on the sidewalk.

In this case, now before the Court,

- (a) the plaintiff was an invitee
- (b) the defendants shoveled and cleared the natural accumulation of snow from both the walkway and the adjacent sidewalk, from the hotel entrance to the curb
- (c) they applied chemicals
- (d) they ceased operations at 9:45 p.m. although they had employees available to continue if necessary
- (e) they knew the entranceway needed further attention at 9:30 p.m. and they intended to sand but failed to do so
- (f) they permitted a sheet of ice to form on the walkway and adjacent sidewalk and
- (g) the plaintiff slipped and fell on the private walkway at its junction with the sidewalk.

3. Applicable Law

A. As the Trial Court stated, the facts are very similar to the facts in *Pessagno v. Euclid Investment Company, Inc.*, 72 U.S. App. D.C. 141, 112 F.2d 577. In the *Pessagno* case, the accident happened around 9 p.m. when plaintiff, the guest of a tenant, was leaving defendants' apartment house to take a cab and was injured by a fall on the private driveway. The day was cold and rainy, the driveway and streets were slippery from ice forming as the rain fell. At the time plaintiff fell it was still raining and freezing and she observed that there was neither sand nor ashes upon the driveway. There was testimony that the building superintendent realized the danger to pedestrians using the entrance and had icy places sanded on four different occasions from 6 a.m. until 5.30 p.m. But at 9:30 p.m. when plaintiff was injured there was no evidence of sand. This Court said,

"The question whether, in these circumstances, what was done was reasonable care was, in our opinion, a question for the jury . . ."

B. In further support of its legal conclusions, the Trial Court referred to *Altemus v. Talmadge*, 61 U.S. App. D.C. 148, 58 F.2d 874. In *Altemus*, a pedestrian stepped into a depression which was located on the boundary line between the public sidewalk and the private walk. The abutting private property owner, as well as the District, were held liable. Defendants attempt to distinguish the *Altemus* case on the ground that it involved a depression in the pavement and not an "ice-and-snow, slip-and-fall occurrence."

In *Pessagno, supra*, the Court said the apartment house owner has the duty,

". . . after notice, to exercise ordinary care to keep them (the approaches) free from conditions, whether permanent or temporary, which make them dangerous to the tenants or their guests."

In *Schallinger v. Great Atlantic and Pacific Tea Co.*, 334 Mass. 386, 135 N.E.2d 655, which case involved a prospective customer who slipped on a patch of ice about two feet wide located partly on the public sidewalk and partly on the recessed entranceway, and wherein it appeared employees had cleaned or salted or sanded the area about two hours before plaintiff's accident, the Court in affirming a verdict against the tea company said at page 657:

"One who invites a business visitor to enter his premises owes to such visitor the duty to use reasonable care to keep the premises in a reasonably safe condition for the visitor's use . . . This duty extends to that part of the premises which is maintained for the visitor's entrance and exit . . . The patch of ice could be found to be a source of danger to customers entering the store and to have been there for such period of time that the tea company knew or should, in the exercise of care, have known of its existence and remedied the condition. It could not have been ruled that the entrance way and the ice that had accumulated therein, whatever the cause of accumulation may have been, were not in the control of the tea company."

C. Appellants argued further that they made exhaustive efforts during the day and evening hours of Friday, December 21, 1962, to provide reasonably safe walking conditions. But the Trial Court found as a fact that they did not. The evidence showed without contradiction that

- (1) the defendants terminated operations at 9:45 p.m.;
- (2) although they had someone available to continue if necessary;
- (3) the manager thought the walkway and adjacent sidewalk needed attention and she ordered Kersey, an employee, to sand;
- (4) she failed to check up on Kersey;

- (5) Kersey testified he did not sand;
- (6) the defendants' termination of operations permitted ice to form;
- (7) the ice was slippery and caused the plaintiff to fall.

In *Pessagno*, the building superintendent also probably thought he, too, had made exhaustive efforts by sanding four times during daylight hours but the jury thought differently and this Court held that was a proper question for the jury.

After having argued that the legal principle in *Radinsky v. Ellis*, a case factually unrelated, is controlling, the defendants conclude their brief by stating

"... negligence was not proven, and if proven, the negligence was nullified by the contributory negligence of the plaintiff."

The defendants, by their activities of shoveling and clearing snow from the walkway and adjacent sidewalk; application of chemicals which caused melting; and their cessation of operations which permitted the melted snow to form ice, were negligent.

In *Kendall v. Gore Properties, Inc.*, 98 U.S. App. D.C. 378, 236 F.2d 673, this Court said at p. 680:

"But, if he (the landlord) knows, or in the exercise of ordinary care ought to know, of a possibly dangerous situation and fails to take such steps as an ordinarily prudent person, in view of existing conditions, would have exercised to avoid injury to his tenant he may be liable. So if he negligently takes such steps as he did take, he may be liable. The landlord was . . . under a duty not to create an unsafe condition in the premises either permanent or temporary by any affirmative action on his part."

Wherefore it is respectfully submitted that based on the evidence

adduced, the Trial Court's Findings of Fact and the legal decisions of this Court in *Pessagno v. Euclid Investment Company, Inc.*, *supra*, and *Altemus v. Talmadge*, *supra*, the question presented — whether an apartment-hotel owner-operator owes a duty to an invitee to safeguard him against dangers on the private walkway entrance at its junction with the sidewalk which dangers could, in the exercise of ordinary care, have been foreseen and prevented — should be answered in the affirmative and the judgment below should be affirmed.

Respectfully submitted,

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